



COMDTINST M16201.1

30 JUL 1997

## COMMANDANT INSTRUCTION M16201.1

Subj: CRIMINAL ENFORCEMENT OF ENVIRONMENTAL LAWS

1. PURPOSE. This Manual provides internal guidance for Coast Guard units and persons conducting operations that may result in referrals to the Department of Justice for the criminal prosecution of parties who violate federal environmental laws that the Coast Guard has jurisdiction to enforce.
2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of headquarters units, assistant commandants for directorates, chief counsel, and special staff offices at Headquarters shall ensure that units and persons under their command are familiar with, and comply with, the guidance in this Manual.
3. DIRECTIVES AFFECTED. None.
4. BACKGROUND. The Coast Guard is the primary federal agency responsible for the enforcement of laws and treaties of the United States on the high seas, in the EEZ, in coastal areas, and in and along the navigable waters of the United States. There are numerous federal laws that serve to protect the marine environment that the Coast Guard has a responsibility to enforce. Many of these laws provide for administrative, civil and criminal sanctions for violations of statutory requirements or implementing regulations. Some of these laws authorize criminal sanctions for negligent conduct, some require knowing or willful misconduct, and some establish strict criminal liability for violations. It is very important that investigations of potential violations of marine environmental laws are done in a manner that will protect all enforcement options. Likewise, referrals of criminal cases, which are resource intensive to investigate and prosecute, should be done only in those situations that best serve the Coast Guard's law enforcement responsibility by promoting compliance with the law, protecting the public health and welfare, and protecting marine resources.

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5. DISCUSSION. The guidance in this Manual applies to all Coast Guard personnel (military and civilian) and personnel from other agencies engaged in law enforcement activities with the Coast Guard.
  - a. This Manual provides guidance specifically for the investigation, analysis and referral by the Coast Guard of environmental law violations for criminal prosecution by the Department of Justice. It should be used in conjunction with currently existing guidance in the Maritime Law Enforcement Manual (MLEM), COMDTINST M16247.1 (series), as appropriate.
  - b. This Manual is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies or personnel, or any other person.
  - c. In cases of apparent conflict between this Manual and provisions in statutes and regulations, the latter provisions shall be applied, and Commandant (G-LMI) shall be advised of the apparent conflict at the earliest opportunity. Likewise, when there is an apparent conflict between the guidance in this Manual and current law enforcement guidance or practice, the conflict should be reported to Commandant (G-LMI) for resolution of the matter. Suggestions for change, expansion or improvement of this Manual are solicited at all times and should be addressed to Commandant (G-LMI).
6. CHANGES. Changes to this Manual will be issued as Commandant Notices. Time-sensitive amendments will be promulgated by ALDIST/ALCOAST, pending inclusion in the next change to the Manual.
7. FORMS/REPORTS. None.

J. M. L.  
Chief of Staff

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## CHAPTER 1. GENERAL DISCUSSION

- A. **PURPOSE.** The purpose of this guidance is to establish procedures to promote the successful criminal prosecutions of corporations and/or individuals for violations of federal marine pollution laws and regulations. This guidance does not create any right or benefit, substantive or procedural, legally enforceable by any party other than the Coast Guard.
- B. **OVERVIEW.**
1. Federal regulation of marine operations to prevent pollution is an important part of our nation's effort to improve environmental quality. The discharge of refuse, including oil, into or along the banks of the United States' waters has been prohibited by federal law for almost 100 years. For over 20 years, owners and operators of vessels or facilities discharging oil into the waters of the United States in quantities that may be harmful have been strictly liable for pollution cleanup costs and damages, and also subject to substantial penalties for discharge violations. Today, the navigable waters and marine environment of the United States are protected by an array of federal, state, and local laws and regulations, and by several international conventions. The Coast Guard, working in concert with the Department of Justice (DOJ) and other federal, state, and local agencies, is dedicated to vigorous enforcement of these laws.
  2. In the past, the Coast Guard had limited enforcement options under the majority of the environmental laws it enforced. A pollution incident typically resulted in a civil penalty case being sent to a Coast Guard Hearing Officer. The enactment of the Oil Pollution Act of 1990 (OPA 90) and amendments to the Act to Prevent Pollution from Ships (APPS) increased the number and type of enforcement options available. Other environmental statutes also have civil and criminal sanctions available as enforcement options. Current federal marine pollution laws provide for significant civil penalties and substantial criminal sanctions.
  3. While the vast majority of pollution cases will still result in civil penalty action, there are cases in which criminal prosecution is appropriate. The Department of Justice, Environmental Protection Agency, Federal Bureau of Investigation, and other Federal, State and local agencies are all interested and involved in prosecuting environmental crime. Recent cases have demonstrated the deterrent effect that occurs when all of these agencies work together.

4. Despite the number of agencies involved in environmental crime enforcement, Coast Guard personnel are typically the first Federal enforcement personnel on scene for many maritime pollution cases. Coast Guard supervisors of personnel who may become involved in investigating pollution incidents must know the elements of proof needed to successfully document a violation of environmental laws in a civil penalty case. Also, they must be aware of circumstances that may warrant more detailed investigation leading to Class II or judicial civil penalties, or to criminal prosecutions.
5. The federal laws prohibiting marine pollution are a vital component of our nation's overall environmental protection program, and the criminal provisions of these statutes constitute a particularly effective enforcement tool. When it appears that a marine pollution incident may involve criminal violations, Coast Guard personnel should carefully coordinate their detection and investigative efforts to establish each element of the offenses beyond a reasonable doubt. The Coast Guard must cooperate with the Department of Justice and other law enforcement agencies to efficiently and effectively utilize resources in support of any prosecution that may be undertaken.

#### **C. LIABILITY FOR MARINE POLLUTION**

1. **RESPONSE COSTS, DAMAGES, AND DISCHARGE PENALTIES.** As a general matter, the owner or operator of a vessel or facility, discharging or threatening to discharge oil or a hazardous substance, is liable for the cost of cleaning up and/or preventing a discharge. They are also liable for any damages, including damage to natural resources, resulting from the discharge. This liability for response costs and damages caused by the pollution is normally imposed regardless of fault. Separate and apart from this strict liability for response costs and damages is a penalty for the discharge itself, which may be civil or criminal. Civil discharge penalties may be assessed against the owner or operator of a discharging vessel or facility regardless of any fault. However, prosecutions seeking criminal sanctions require a showing of either negligent or knowing conduct. Negligent discharges of oil and other pollutants under the Clean Water Act are Class A misdemeanors with criminal penalties of up to one year imprisonment and fines of up to \$100,000 for individuals or \$200,000 for organizations. A knowing discharge of a pollutant, including oil, under the Clean Water Act is a felony with criminal penalties of imprisonment for up to 3 years and fines of up to \$250,000 for an individual or \$500,000 for an organization. Similarly, a knowing



discharge of plastics, garbage, oil, or noxious liquid substances in violation of the Act to Prevent Pollution from Ships is a felony with criminal penalties of imprisonment from 5 up to 10 years and fines of up to \$250,000 for an individual or \$500,000 for an organization. Further, if a violation results in monetary damages to others, then the defendant may be subject to an "alternative" fine under 18 U.S.C. § 3571(d) of up to twice the gross loss caused by the violation.

2. **CRIMINAL INTENT.** Most marine pollution statutes prohibit knowing conduct that violates the statutes. Because environmental statutes protect human health and the environment, courts have generally considered them to be public welfare laws. Because the courts have adopted this view, the government must normally show only that the conduct in question was intentional, that is, not a result of accident or mistake. In other words, the Government need not show that the defendant intended to break the law in taking the illegal actions, but only that the defendant knew about the illegal actions that occurred. In addition to criminal sanctions for knowing conduct, the Clean Water Act provides criminal sanctions for negligent conduct. The standard applied in negligence cases is whether the suspect used reasonable care, that is, the care that a reasonably careful person would use under similar circumstances. The courts have interpreted a few statutes, such as the Refuse Act, 33 U.S.C. §§ 407 and 411, as strict liability crimes. This means that the Government need not show knowledge or negligence, but need only show that the prohibited conduct occurred.
3. **CORPORATE CRIMINAL LIABILITY.** Like individuals, corporations (or similar organizations) may be convicted of crimes. To hold a corporation criminally liable, the Government must show that (1) the offense was committed by an officer, director, employee, or agent of the corporation, (2) each of the acts committed by the officer, director, employee, or agent was done within the course and scope of employment or agency, and (3) the officer, director, employee, or agent committed each of the essential elements of the offense with the intent to benefit the corporation. It is not necessary for the Government to prove that the corporation authorized the criminal act formally or in writing. Therefore, when questioning crew members, investigators should determine whether they were acting independently, or as a member of the crew, on behalf of the vessel or their employer, or at the direction of another.

4. **ADDITIONAL THEORIES OF INDIVIDUAL CRIMINAL RESPONSIBILITY.** In addition to being criminally liable for acts that one commits themselves, individuals also may be criminally liable in certain circumstances for acts committed by others. Three doctrines of criminal liability that define when individuals may be liable for the acts of others are the doctrine of aiding and abetting, the responsible corporate officer doctrine, and the doctrine of "willful blindness."
- a. **Aiding and Abetting.** A person may be criminally liable for the acts of another person under the aiding and abetting statute, 18 U.S.C. § 2. A person aids and abets a crime committed by another if, before the crime is completed, the person knowingly and intentionally aids, counsels, commands, causes, induces, or procures the other person to commit the crime. Merely associating with a person who commits a crime does not constitute a violation of this statute; rather, the aider and abetter must knowingly and willfully seek to have the crime succeed. An example of an individual who would be liable for aiding and abetting is a master of a vessel who orders a crew member to pump oily bilge water overboard in violation of the Clean Water Act discharge prohibitions, and the crew member does so.
- b. **Responsible Corporate Officer.** A person may be criminally liable for the acts of another under the doctrine of the responsible corporate officer. Some courts have recognized that, in the area of public health and welfare laws, such as environmental statutes, responsible corporate officers may be criminally liable for acts committed by their subordinates. The Clean Water Act specifically includes "responsible corporate officers" among the persons who can be liable for violations of the statute. Under the responsible corporate officer doctrine, a person in an organization is criminally liable when that person has knowledge of a criminal violation committed by a subordinate, has the authority to stop or prevent the violation, and fails to stop or prevent the violation. A corporate officer is not liable just because a subordinate committed a crime, rather the corporate officer must have known of the crime and failed to do anything about it. An example of an individual who would be criminally liable under the responsible corporate officer doctrine is the master of a vessel who knows that the chief engineer pumps oily bilge water overboard every night in violation of the Clean Water Act, and fails to order the chief engineer to stop the practice.

- c. **Willful blindness.** A person also may be criminally liable under the doctrine of willful blindness. Most environmental crimes require that the government show that the defendant acted "knowingly" i.e. that the defendant knew about the conduct that was illegal. In some circumstances, individuals may attempt to avoid knowing about certain conduct in order to avoid liability. If a person is aware that there is a high probability that criminal activity is occurring, but that person deliberately avoids learning the truth about the activity, then that person may be considered to have acted knowingly for purposes of criminal liability under the willful blindness doctrine. An example of an individual who would be criminally liable under the willful blindness doctrine is a master who tells the chief engineer to pump the contents of the engine room bilges overboard knowing that these bilges frequently contain oil, but deliberately avoids acquiring the specific knowledge that oil was present in the bilges before ordering that they be pumped out.
- d. Given the above, investigations should focus not only on individuals directly involved in violations of law, but also on their supervisors and on officers in their companies who may be responsible for the actions of employees. These supervisors and company officials can best deter illegal action in many cases and can ensure that the culture within the company is one of environmental compliance and incident prevention. Coast Guard investigators should work closely with District Legal Officers and DOJ attorneys in these areas of law as doctrines such as responsible corporate officer and willful blindness are still developing.

**D. ALTERNATIVES FOR PROCESSING ENVIRONMENTAL VIOLATIONS.**

Levels of proof, procedures and evidentiary requirements vary depending upon whether the case is processed as a civil penalty or a criminal case.

- 1. **CRIMINAL PROSECUTION.** Criminal prosecution of individuals and corporations that violate environmental laws through the intentional or negligent discharge of pollutants into the marine environment is an appropriate and powerful deterrent to environmental crime. Criminal charges require proof of each element of the violation beyond a reasonable doubt. Criminal cases are referred to the U.S. Attorney for trial in a Federal District Court, where strict rules of evidence apply. Under 33 C.F.R. § 1.07-90, the authority for a referral for criminal prosecution rests with the District Commander.

2. **CIVIL JUDICIAL PROCEEDING.** A judicial civil penalty is authorized to be assessed for violations of the Clean Water Act. When the evidence available in a pollution case does not meet the burden of proof for a criminal charge, the case may still be processed for a judicial civil penalty if the preponderance of the evidence establishes a violation. A preponderance of the evidence standard means that the Government must show that it was more likely than not that the violation occurred. The procedural requirements and rules of evidence are more rigorous in a Federal civil court trial seeking a judicial civil penalty than those applicable to administrative assessments of civil penalties. However, when the circumstances or quantity of pollutant discharged indicate that a penalty in excess of the \$10,000 per day administrative limit is appropriate, or when an injunction is needed, a civil suit in Federal District Court is the appropriate way to proceed. Pursuant to chapter 18 of the Coast Guard Claims and Litigation Manual, COMDTINST M5890.9, civil litigation referrals to the Justice Department must be approved by Commandant (G-LCL). Requests for approval to refer judicial civil penalty cases should be submitted to Commandant (G-LCL) via the District Legal Office. In emergencies, requests can be processed orally.
3. **ADMINISTRATIVE CIVIL PENALTIES.** There are three types of administrative civil penalties available for discharges and violations of regulations under the Clean Water Act. Civil penalties for violations of other environmental laws, such as the Act to Prevent Pollution from Ships, are assessed by Hearing Officers as outlined in paragraph 3.b. below. Guidance on appropriate considerations to be taken into account in determining appropriate civil penalties is provided in COMDTINST 16200.3 (series).
- a. **CLASS II.** A Class II civil penalty requires a formal hearing before an administrative law judge in accordance with procedures and evidence rules set forth in 33 C.F.R Part 20. The maximum penalty for a violation case in such proceedings is \$125,000, but the penalty may not exceed \$10,000 per day for each day during which a particular violation continues.
- b. **HEARING OFFICER.** The most common method of assessing Coast Guard civil penalties is by submission of the violation case to a Hearing Officer in accordance with the procedures in 33 C.F.R § 1.07. The procedures for this type of civil penalty are less formal and the Hearing Officer is not bound by strict rules of evidence.

- c. **TICKET PROGRAM.** 33 C.F.R § 1.07-11 provides a simplified alternative to Class II or Hearing Officer civil penalty procedures for resolving some Coast Guard civil penalty cases. The Coast Guard has published a "Ticket" guide, COMDTINST M5582.1, authorizing use of the simplified procedures for oil discharge violations of 100 gallons or less when the discharge involves "no significant gravity or culpability."

**E. COAST GUARD CRIMINAL CASE SELECTION PROCESS.**

1. **CIVIL OR CRIMINAL SANCTIONS DECISION.** Once the evidence collected shows that a violation of an environmental law has occurred, the investigators must then decide if the case would warrant more comprehensive Coast Guard investigation for purposes of criminal prosecution as opposed to civil penalty action.
- a. When a violation carries both a civil and criminal penalty, the District Commander is authorized to institute civil penalty proceedings or to initially refer the case to the Department of Justice for criminal prosecution. See 33 C.F.R. §1.07-95. The regulations state that the District Commander should identify the laws and regulations violated and make specific recommendations about the proceedings to be instituted by the Department of Justice.
- b. The decision to expend Coast Guard resources to investigate a case for criminal prosecution is within the discretion of the District Commander. The discretion to investigate and refer a case for criminal prosecution is part of the discretion exercised under the Coast Guard's law enforcement mission and should be exercised within the context of the Commandant's overall enforcement policy for environmental laws. This law enforcement discretion is separate from the discretion later exercised by the Department of Justice (DOJ) to accept or refuse a case for criminal prosecution. However, the exercise of discretion by the District Commander serves as a critical precursor to the exercise of discretion by DOJ. It is important to realize that other federal, state and local agencies have independent authority to refer maritime pollution cases to the Department of Justice for criminal prosecution. Therefore, District Commanders should ensure that the Coast Guard's investigative and referral procedures are exercised in cooperation with other agencies when appropriate.

c. The decision to commit the necessary Coast Guard resources to obtain the evidence that will support a criminal prosecution must often be made in the very early stages of a pollution incident. While that determination sometimes needs to be made very quickly, it should nevertheless be based on a reasoned assessment of accurately transmitted facts and recommendations. The process for coordination of input on such decisions is discussed in the section on Command, Control, and Consultation.

2. **DETERMINING APPROPRIATE SANCTIONS.** Setting fixed thresholds (such as the quantity of pollutant discharged, the number of prior offenses, the circumstances of the discharge, and other such objective considerations) as the sole basis guiding exercise of discretion to pursue criminal sanctions would be counterproductive. The determination to investigate for criminal prosecution involves weighing the conduct, analyzing the evidence available, determining Coast Guard enforcement objectives, and prioritizing the use of available resources.

3. **CRIMINAL CASE SELECTION CRITERIA.** The case selection criteria outlined in the following paragraphs identify misconduct worthy of criminal investigation because criminal sanctions would best punish the conduct involved and deter future criminal conduct. The criteria are partly based upon the minimum prosecution guidelines for environmental violations established by DOJ and other enforcement agencies. The criminal case selection process is based on two general measures, significant environmental harm and culpable conduct. These measures, and the factors used to assess them, are a sliding scale. Thus, a high degree of one measure may tip the balance in favor of prosecution even if the other measure is not present. For example, a case may warrant criminal prosecution when culpability is demonstrated by a long history of misconduct and good evidence that the violation was covered up even if environmental harm is unknown or unknowable. Similarly, criminal prosecution may be appropriate for a negligent discharge when the environmental harm is severe. The factors listed are not rigid requirements. While it is possible that environmental harm or culpable conduct alone may make criminal investigation appropriate, it is also possible that the presence of a combination of any of the factors listed, or even an unlisted consideration, may warrant criminal investigation.

a. **SIGNIFICANT ENVIRONMENTAL HARM.** The measure of significant environmental harm should be broadly construed. It includes the presence of actual harm to the environment, or to human health and safety,

as well as the threat of significant harm. The following factors serve as indicators that a case may warrant investigation for criminal prosecution:

**Factor 1 - Actual harm**, as evidenced by an illegal discharge, or category of discharges, of pollutants having an identifiable and significant adverse impact on human health and safety or on the environment. This measure will be generally self-evident at the time of case selection, e.g., the discharge of pollutants into an environmentally sensitive area or pristine environment.

**Factor 2 - The threat of significant harm** to the environment or human health as evidenced by an actual or threatened discharge or release of pollutants. This factor may not be as readily evident as actual harm and, therefore, must be assessed in light of all the facts available at the time of case selection. Ongoing or routine discharges of pollutants that have a cumulative adverse impact on human health and safety may constitute a such a threat.

**Factor 3 - Failure to report** an actual discharge or release, taking into account considerations under Factors 1 and 2, may be an additional factor favoring criminal investigation. While the failure to report alone may be a criminal violation, Coast Guard investigative resources should generally be targeted toward those cases in which failure to report is coupled with actual or threatened significant harm.

**Factor 4 - Illegal conduct that appears to represent a trend** or common attitude within a regulated community when criminal prosecution may have a significant deterrent effect. While the violations in a single case may have had a relatively insignificant adverse impact on human health or the environment, such violations, if multiplied by the numbers within a regulated community, may result in a large volume of pollution or significant environmental harm. For example, it could become an accepted practice within an identifiable segment of the maritime industry to pump oily water from bilges directly into waterways or to use detergents to try to conceal minor discharges. A criminal investigation may be warranted to deter the industry from this practice.

- b. **CULPABLE CONDUCT.** The measure of culpable conduct is not necessarily an assessment of criminal intent, particularly because criminal intent will not always

be readily evident at the time of case selection. Culpable conduct, however, may be indicated at the time of case selection by several factors:

**Factor 1 - History of Repeated Violations** - While a history of repeated violations is not a prerequisite to a criminal investigation, a suspect's compliance record should always be carefully examined. When repeated enforcement activities, such as warnings or civil penalty actions, have failed to deter violations, criminal investigation may be warranted.

**Factor 2 - Knowledge of Illegality of Conduct** - Although the environmental statutes do not usually require proof of specific intent to break the law, direct or circumstantial evidence that a suspect knew that the conduct was forbidden is a major factor indicating that a criminal investigation is warranted. For example, the posting of signs on vessels which state that the discharge of oil and plastic is prohibited may indicate that a suspect who discharged oil or plastics from that vessel had a specific intent to violate the law.

**Factor 3 - Presence of Deliberate Misconduct** - Evidence that the violation was deliberate, and not a result of accident or mistake, is an important factor to consider in determining whether a case warrants criminal prosecution. Evidence that the discharge could not have occurred without human intervention - for example, the turning of a valve, or the use of pumps or hoses - strongly indicates that the violator meant to cause the release and, therefore, acted knowingly.

**Factor 4 - Concealing Misconduct, Falsifying Regulatory Documents, Tampering with Monitoring Devices and Providing False Statements** - The Coast Guard Captain of the Port (COTP) and other government officials must be able to rely on data received from the regulated community. If the data submitted to the Coast Guard is false or misleading, COTPs can not carry out their environmental protection mission effectively. Accordingly, evidence that indicates an individual or company is falsifying data, covering-up misconduct or illegal environmental activity, tampering with or disconnecting monitoring devices, or making false statements to Coast Guard personnel, strongly suggests that criminal investigation is warranted.



**Factor 5 - Other Illegal Activity/Obstruction of Justice** - Conduct that inhibits an investigator's ability to perform his duties - for example, witness tampering, destruction of evidence, or bribery of regulatory personnel - are strong indicators of illegal activity. Other illegal activity - such as conspiracy to violate the law, mail fraud, threats against regulatory personnel, or narcotics violations - when examined in the context of environmental regulation, also should be considered in determining whether a case warrants criminal prosecution.



## **CHAPTER 2. COMMAND, CONTROL, AND CONSULTATION**

### **A. GENERAL RESPONSIBILITY.**

1. As outlined in Chapter 9 of the Maritime Law Enforcement Manual, COMDTINST M16247.1 (series), the Coast Guard has two responsibilities regarding marine pollution. The first is to ensure an effective response to actual or threatened pollution incidents in order to minimize damage to the public and the marine environment. The second is to enforce applicable pollution laws and regulations.
2. Effective performance of the Coast Guard's missions in pollution incidents when there is a potential for criminal prosecution requires extensive and timely cooperation among a large number of persons across various mission areas. It is the responsibility of all Coast Guard personnel to cooperate in this process.

### **B. COAST GUARD COORDINATION PROCESS FOR MANAGING POLLUTION CASES WITH THE POTENTIAL FOR CRIMINAL PROSECUTION.**

#### **1. INITIAL SIGHTING/RESPONDING COAST GUARD UNIT.**

- a. **DUTY.** The initial sighting of, or receipt of a report of, a pollution incident is often made by Coast Guard air crews, boat crews, or station watchstanders. All Coast Guard personnel observing or receiving a report of pollution should attempt to identify and document the source of pollution and immediately report the matter to the nearest Coast Guard Marine Safety Office (MSO) via the chain of command. Initial reports of the basic facts should be made by the fastest available means, normally orally by telephone or radio. Reports should not be delayed until filing of post flight messages or daily SITREPs. Under the National Contingency Plan (40 C.F.R. § 300.300(b)), the Coast Guard is designated as the agency to receive reports of pollution incidents. Thus, someone is always available to receive reports and initiate further action in appropriate circumstances. Should immediate access to the MSO be unavailable, alternative reporting may be made to the District Command Center or the National Response Center at 1-800-424-8802.
- b. **POTENTIAL FOR CRIMINAL CASE.** In some instances, it becomes evident at an early stage that a case may warrant criminal prosecution. However, in many instances, it will not be possible to determine whether criminal charges are appropriate without

additional investigation or until the matter is evaluated by the District Legal Office. It is, therefore, very important that all Coast Guard personnel involved in responding to, or investigating, a particular incident do so with the knowledge that the information obtained may be used in a subsequent criminal prosecution. This is especially true for those involved in evidence gathering roles (e.g., witness interviews, sampling, photographing scenes, etc.).

- c. **INITIATION OF CRIMINAL ENFORCEMENT ACTION.** Except when safety considerations dictate otherwise, the cognizant Captain of the Port is likely to request the on-scene unit to initiate a preliminary investigation to document the facts surrounding the violation. In all such cases, rapid and accurate transmission of factual information from the initial sighting/responding unit is critical to making reasoned decisions regarding whether or not to mobilize investigative and legal resources, and to undertake boarding and evidence collection activities, that are necessary to support a criminal prosecution. All Coast Guard environmental law enforcement actions should be conducted in accordance with the provisions in the Maritime Law Enforcement Manual (MLEM), the Marine Safety Manual (MSM), and other applicable guidance. When units other than Marine Safety units are the first to obtain information that a pollution case may warrant criminal investigation, the report should be transmitted to the cognizant MSO. For significant cases, it is recommended that the District Command Center also be patched in so that all critical decision-makers will be informed as rapidly as possible of the facts without the inaccuracies inherent in multiple repetitions of the same information.

## **2. COAST GUARD OFFICES INVOLVED IN ENVIRONMENTAL ENFORCEMENT.**

- a. **COAST GUARD CAPTAIN OF THE PORT (COTP).** The COTP is the principal Coast Guard official responsible for the enforcement of marine environmental laws and regulations. As the designated on-scene coordinator (OSC) for marine pollution incidents, the COTP has the authority to direct all public and private actions to remove a discharge, or to mitigate or prevent a substantial threat of a discharge. This includes the authority to coordinate law enforcement actions as necessary to ensure these actions do not interfere with response efforts. Consequently, the Captain of the Port will normally be the officer

controlling marine environmental law enforcement operations, particularly in the early stages when pollution response, environmental cleanup, and safety of life are the most important considerations.

- b. **MSO NOTIFICATION, ASSESSMENT, and CONSULTATION.** The cognizant MSO must be notified as soon as possible of the details of all pollution incidents. The COTP will evaluate all the relevant facts, including any potential safety hazards, and initiate appropriate action. This should include assessment of apparent violations to determine whether criminal investigation should be initiated.

### 3. **DISTRICT COMMANDER.**

- a. **DISTRICT COMMAND CENTER.** The Command Center is the clearing house and coordination point for all significant Coast Guard law enforcement actions. For incidents in which criminal investigation may be warranted, time is of the essence. The Command Center must be aware of the District staff elements that should be immediately notified for incidents in which criminal prosecution is being considered. These normally include marine safety (m), legal (dl), and operations (o) staff, and the Coast Guard Investigative Service (CGIS) special agent in charge when Coast Guard criminal investigations resources are immediately required. Thereafter, it is recommended that the Command Center be apprised of the case status, particularly in cases in which Statement of No Objection (SNO) authorizations are required. This is particularly important when the case involves foreign flag vessels.
- b. **MARINE SAFETY DIVISION (m).** The District Marine Safety Division provides subject matter oversight and guidance on all marine safety and environmental protection issues. They are the link with higher Coast Guard authority on such issues and the supply source for any additional marine safety or environmental protection resources that may be required.
- c. **DISTRICT LEGAL OFFICE (dl).** The Legal Office is the source of legal services for all Coast Guard operations within the district. For pollution cases with the potential for criminal prosecution, this will include advice on the sufficiency of evidence to meet the standard of proof beyond a reasonable doubt, on the elements of various offenses, and on restrictions on enforcement action under domestic and international law. The District Legal Officer is

the designated liaison point with the Department of Justice (DOJ) for all litigation matters, and is responsible for advising the District Commander on all criminal referrals. The legal office will coordinate the District Commander's referral of criminal cases to the Department of Justice, including any specific recommendations on what action should be initiated by DOJ. The legal office will also provide guidance on an appropriate security in lieu of withholding customs clearance in all cases with significant potential for criminal referral. Finally, the District Legal Office will coordinate all judicial civil penalty referrals via Commandant (G-LCL).

**4. COAST GUARD INVESTIGATIVE SERVICE (CGIS), SPECIAL AGENTS.**

- a. PROSECUTION OF CRIMINAL CASES.** There are important legal concerns associated with successful prosecution of criminal cases. These concerns mean that criminal investigators may require unique training over and above that currently provided to the majority of personnel serving as Investigating Officers and pollution investigators. Personnel involved in an investigation for criminal prosecution must, for instance, be trained to deal with more stringent rigors of proof, have knowledge of Federal Rules of Evidence, be familiar with requirements for criminal search warrants, be familiar with grand jury requirements, and have experience regarding Constitutional protections applicable to suspects.
- b. ROLE OF COAST GUARD INVESTIGATIVE SERVICE (CGIS).** CGIS Agents are available to investigate criminal violations of environmental laws enforced by the Coast Guard. CGIS should be notified and consulted regarding all cases that may be referred to the Department of Justice for criminal prosecution. CGIS Agents are trained criminal investigators who are familiar with the legal issues associated with prosecution of a criminal case. Additionally, CGIS Agents regularly work with agents of other Federal, State, and local law enforcement agencies and frequently become aware of violations of environmental laws and ongoing criminal investigations through these sources. Frequently, after a case is accepted for prosecution, but before it goes to trial, the Department of Justice attorney prosecuting the case will require case investigation assistance in the form of service of grand jury subpoenas, further witness interrogation or other such follow-up. While it is often difficult for MSO

personnel to commit the time necessary to fulfill this need, a CGIS Agent can serve as "case agent" for Department of Justice Attorneys on Coast Guard investigations and have experience in performing this function.

c. **AVAILABILITY.** CGIS Agents work for the Commandant under the direction of the regional Special Agent in Charge (SAC). Requests for an agent's services on a case must be requested by a unit's commanding officer via the District Commander. Oral requests should be followed by written confirmation. The SAC must determine to what extent military and civilian agents are authorized to support the various requests for assistance. It should also be recognized that the ability of CGIS to commit criminal investigative resources to a particular case is limited by investigative workload. In instances in which a Coast Guard special agent can not be made available immediately, the SAC may be able to obtain criminal investigative assistance from other agencies, such as the EPA or the FBI.

d. **COORDINATION.** Unless expressly directed by the Chief of CGIS or higher authority, CGIS will not conduct an environmental crime investigation in a COTP zone without first notifying and, thereafter, coordinating with the COTP. Likewise the COTP should avoid committing the Coast Guard to participation in criminal investigations, either solely or in coordination with other enforcement agencies, without first consulting the District Commander who will ensure appropriate coordination with CGIS. In the event exigent circumstances require the initiation of a criminal investigation before such notification or consultation can occur, the required communication must occur as soon as practical thereafter. Finally, all unit commanders should keep in mind that, once a case is accepted for criminal investigation by CGIS, CGIS agents are required to follow procedures outlined in the CGIS Investigations Manual, COMDTINST M5527.1 (series).

5. **CONSULTATION WITH THE DEPARTMENT OF JUSTICE.** The Department of Justice makes the final decision on whether, and under what conditions, to prosecute violations of the environmental laws as criminal cases. Primary responsibility for the approval and prosecution of environmental crimes rests with the U.S. Attorney's office in the judicial district in which the violation is alleged to have occurred. The DOJ Environmental Crimes Section in Washington, DC, may also participate in such prosecutions with the agreement of the cognizant U.S. Attorney's office. The effective investigation and

successful prosecution of environmental criminal cases often requires early consultation with the Department of Justice. Consequently, it is imperative that all Coast Guard offices and units coordinate as soon as possible, through the District Legal Office, with the U.S. Attorney's office or the Environmental Crimes Section when initiating an investigation of violations of environmental laws for possible criminal prosecution. Such early consultations ensure coordination during rapidly developing investigations, help to develop consensus regarding the appropriate focus of investigative efforts, and avoid the unproductive use of investigative resources.

6. **ENVIRONMENTAL CRIMES TASK FORCES.** Many U.S. Attorney offices and State law enforcement offices have formed Environmental Crimes Task Forces to address the problems inherent in coordinating enforcement actions by the numerous Federal, State and local law enforcement agencies that have jurisdiction over environmental crimes. The focus and makeup of these task forces differ depending on the individual U.S. Attorney or State agency that established the task force. Coast Guard participation in these task forces serve as a good means to inform other enforcement agencies of Coast Guard missions and interests in the environmental area, to establish a means of coordinating enforcement actions among agencies for major environmental cases, to identify resources and capabilities outside of the Coast Guard that may be useful in accomplishing Coast Guard missions, and to establish good working relationships among enforcement agencies and prosecuting attorneys involved in the enforcement of environmental laws. District Commanders are encouraged to identify opportunities for the Coast Guard to participate in these task forces, particularly on the Federal level, and to identify appropriate Coast Guard personnel to serve as representatives taking into account the focus and makeup of the task force.
7. **COMMUNICATIONS WITH THE PUBLIC AND THE MEDIA.** All inquiries, including those from the media or the public, regarding matters for which criminal prosecution is being considered, or for which a referral to the Department of Justice has been made, should be referred to the District Legal Office. Upon receiving a request for information about such cases, the District Legal Officer should consult with the appropriate DOJ attorneys to ensure that any information provided does not inadvertently violate Federal Rules of Criminal Procedure or court orders, or otherwise compromise ongoing investigations. The same guidance applies to press releases about the cases. The District Legal Officer should ensure that the District Public Affairs



Office is appropriately informed of restrictions on information provided about criminal investigations and prosecutions of cases in which the Coast Guard is involved. DOJ and Coast Guard policy is to neither confirm nor deny the existence of a criminal investigation. Similarly, Coast Guard employees should refuse comment regarding whether criminal prosecution is being considered or whether the matter has been referred to DOJ. In general, a good rule of thumb is to refer all requests for information to DOJ once a case is being investigated, or has been referred, for criminal prosecution.

8. **LIAISON WITH STATE ENFORCEMENT AGENCIES.** Many states have significant environmental criminal enforcement programs and resources that can be utilized as additional sources of expertise and resources in dealing with criminal investigations of environmental law violations. Under 14 U.S.C. § 141(b), the Coast Guard is authorized to avail itself of officers, employees, advice, information and facilities of any Federal, State or local government agencies as may be helpful in the performance of its duties. When State or local government personnel are utilized under the authority of this statute, the Coast Guard is authorized to make payments for per diem and travel for these persons to the same extent prescribed for Federal employees. In many cases, State enforcement agencies and prosecutors may be represented on Federal environmental crimes task forces. But even if this is not the case, Coast Guard investigators should attempt to identify State and local environmental enforcement agencies, services and other resources that could assist in investigation of environmental violations. Examples are forensic laboratories, HAZMAT testing, surveillance equipment, and so on.

- a. **PROSECUTION UNDER STATE LAW.** In some cases, it may be appropriate or convenient for the State to prosecute violations under state law rather than for the Federal government to prosecute under Federal law. State environmental statutes sometimes have elements of offenses that are easier to prove under the circumstances than corresponding Federal statutes. In some cases, no Federal statutes are available to prosecute under the circumstances while a state statute, such as a state litter law, may apply. It is important to have contacts with state environmental enforcement agencies so that these types of options can be discussed. In the end, the same considerations for criminal prosecution apply to Coast Guard referrals under state statutes as under Federal statutes.

- b. **FEDERAL ASSIMILATIVE CRIMES PROVISIONS.** Section 901 of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104-132, 110 Stat. 1214, 1317) amended the "special maritime and territorial jurisdiction" of the United States so that, for purposes of Federal criminal jurisdiction for crimes under Title 18, U.S. Code, the territorial sea is now extended to 12 NM. Environmental statutes are not in Title 18, although some other crimes such as false statements, obstruction of justice, and other such crimes in Title 18 may be appropriate in environmental cases (see Appendix I). However, section 901 also amended section 13 of Title 18, the assimilative crimes provisions, to extend these provisions out to 12 NM. The assimilative crimes statute provides that, whenever an individual is not punishable under Federal law for conduct that would be punishable if committed within the jurisdiction of the state where the offense took place, such conduct is punishable as an offense in Federal court and the same punishment authorized under state law is applicable. Section 901 amended the assimilative crimes provisions so that waters of the territorial sea that lie outside jurisdiction of any state are deemed to lie within the state out to a distance of 12 NM for purposes of the assimilative crimes provisions. This means that state environmental statutes that provide for criminal sanctions can now serve as a basis for Federal prosecution when violations of such statutes occur in the 12 NM territorial sea and no Federal statute applies. For this reason, it is important that Coast Guard investigators and legal officers become familiar with state environmental crimes that could be applicable to vessels.

**9. COORDINATION WITH COMMANDANT (G-L).**

- a. The ability to enforce environmental laws through criminal sanctions is a relatively recent development. There are numerous issues related to prosecution of cases involving vessels and the marine environment that could have wide-ranging effects on Coast Guard operations. For this reason, it is extremely important that the Chief Counsel be informed when cases are referred for criminal prosecution. District Legal Officers should inform the Commandant (G-L) by message of the referral of a case. The message should identify the defendants and the U.S. Attorney's office to which the case has been referred, include a brief summary of the facts in the case and cite the violations referred.

- b. Subsequent messages should inform of decisions in the case and sentencing information. Additionally, if issues involving referred cases arise on appeal, a message should be sent to the Commandant (G-L) identifying the issues that are being appealed. As most cases on appeal are handled by the Appellate Staff within the Department of Justice, this will allow the Chief Counsel to ensure that Coast Guard interests are addressed by coordinating with DOJ on the particular case.

**C. COORDINATION OF CIVIL AND CRIMINAL PROCEEDINGS (PARALLEL PROCEEDINGS) .**

**1. COORDINATION PRIOR TO ACTING.** After a criminal investigation has been initiated, civil or administrative actions taken by the Coast Guard involving a suspected violator could have a negative effect on the success of Coast Guard and Department of Justice efforts to pursue criminal sanctions. A prime example would be the Coast Guard's administrative assessment of a civil penalty against a party for the same offense for which the Coast Guard has made a criminal referral to DOJ. In some instances, courts have held that prior civil penalty action was punitive and that any subsequent criminal prosecution for the same violation would be unconstitutional as it would result in double jeopardy. Therefore, when there is a potential for parallel civil and criminal proceedings, careful coordination is imperative to avoid conflicts. To the greatest extent possible, the Coast Guard unit involved must ensure that its actions do not unnecessarily interfere with criminal enforcement action being undertaken against a suspected violator.

- a. Any criminal prosecution of suspects should generally be brought and resolved first. When a criminal prosecution is being considered, action to impose a civil penalty or similar sanction should be held in abeyance until the Coast Guard is notified by the Department of Justice that charges have been brought or declined.
- b. When the Coast Guard has referred a matter for criminal prosecution to the Department of Justice, parallel civil or non-emergency Coast Guard administrative action involving penalties or civil fines should only be undertaken after approval by the District Legal Officer, who will consult with the Department of Justice.
- c. In order to ensure that parallel proceedings are properly addressed, civil penalty case files on incidents for which a criminal investigation is also

underway should be clearly marked on the front of the file with a statement to the effect that no administrative or civil penalty may be assessed without the approval of the District Legal Officer. All related MSIS and other computer files should contain a similar instruction. When CGIS special agents or other law enforcement agency agents are assigned as "case agents" for criminal matters, they shall be kept informed of all matters that may have an effect on the pending criminal cases. This guidance also applies to past and future violations by the same company, vessel or individual for which a penalty or fine may otherwise be appropriate. These other violations need to be brought to the attention of the District Legal Officer, the criminal investigation case agent, and the Department of Justice as soon as possible. A determination will then be made as to whether these additional matters should be made part of the ongoing criminal investigation.

- d. This guidance only applies to civil and administrative penalties and fines. It does not limit the ability of the Coast Guard unit commanders to take remedial actions to remove a discharge, to mitigate or prevent the threat of a discharge, or to protect the public health and welfare.

#### **D. TRANSFER OF EVIDENCE BETWEEN CIVIL AND CRIMINAL CASES**

- 1. **CIVIL TO CRIMINAL.** Evidence obtained through civil investigations or regulatory inspections may normally be shared with criminal investigators. No rule bars the transfer of information from the civil side to the criminal side of a parallel proceeding. However, it is not appropriate to use administrative action or civil discovery for the sole purpose of furthering a criminal investigation. Therefore, the following guidance should be followed:
  - a. Evidence obtained through past or ongoing civil investigations or regulatory inspections may be shared with the prosecutor or criminal investigator as long as the investigation or inspection was conducted in good faith based on civil or administrative authorities. For example, the information obtained as the result of a marine casualty or pollution incident investigation may be shared with criminal investigators.
  - b. Evidence obtained through regulatory inspections may be shared with criminal investigators provided that the inspection was part of a legitimate Coast Guard

regulatory inspection program.

- c. The fact that a particular person or company is the subject of a criminal investigation does not alter the authority or responsibility of Coast Guard regulatory personnel to ensure that the individual or corporation is in compliance with applicable laws and regulations. This means that, after appropriate consultation with the District Legal Office and DOJ, the Coast Guard will normally continue to conduct appropriate inspections and boardings, and to investigate and develop cases on other violations involving the individual or company. However, any additional violations should be promptly shared with the criminal investigations agent(s) and the District Legal Officer, who will ensure that the DOJ prosecutor assigned to the criminal investigation is apprised of the information. Additionally, no penalty should be proposed without approval of the District Legal Officer, after consultation with the Department of Justice.

- 2. **CRIMINAL TO CIVIL.** Questions regarding evidence collected in a criminal investigation that the Coast Guard desires to use in a civil penalty or other administrative proceeding, such as a suspension and revocation proceeding for licenses and documents, should be referred to the Legal Office for consultation with the criminal prosecutor. Federal Rule of Criminal Procedure 6(e) prohibits the disclosure of matters before a grand jury to anyone except individuals determined to be necessary for the criminal enforcement action. A list of the individuals to whom information is disclosed must be provided to the District Court that impaneled the grand jury. Rule 6(e) protects information that would reveal what has occurred or will occur inside the grand jury room. This information could include transcripts of grand jury testimony as well as evidence compelled to be produced by a grand jury subpoena. It is improper to share or disseminate grand jury related information that is subject to Rule 6(e) protections. Restrictions on the use of grand jury information, therefore, may delay and limit the feedback available on the progress of criminal investigations that have been referred by Coast Guard units for criminal prosecution.



## **CHAPTER 3. GENERAL INVESTIGATIVE TECHNIQUES AND EVIDENCE COLLECTION**

### **A. CRITICAL DECISION POINTS**

- 1. INITIAL APPROACH QUESTIONS AND THE DECISION TO STOP A VESSEL THAT IS UNDERWAY.** There may be occasions when it is necessary to conduct an investigation on a vessel that is underway. It is Coast Guard policy to undertake law enforcement action only when it is both lawful and appropriate under U.S. and international law, and under any applicable policy guidance. Before such an investigation is conducted, enforcement personnel should determine (1) whether Coast Guard personnel have authority in the particular location; (2) whether any substantive U.S. law applies to the situation; (3) whether international law has any effect to grant or limit jurisdiction; and (4) whether any relevant policy guidance counsels for or against the exercise of jurisdiction. See Coast Guard Maritime Law Enforcement Manual (MLEM), COMDTINST M16247.1A, section 2-A-1. Answers to the initial approach questions as outlined in Enclosure 5 to the MLEM are often critical in making the decision to conduct such an investigation.
- 2. DECISION TO DETAIN VESSELS FOR BOARDING/INVESTIGATION.** International law requires that the Coast Guard avoid any unnecessary interference with the transit and operations of foreign vessels. Under the MLEM, Enclosure (3), it is Coast Guard policy to ensure that enforcement actions with potentially significant international or economic impact are both lawful and appropriate under the circumstances. This is done through "consultation with appropriately senior and fully informed levels in the chain of command." In addition, absent the master's consent (see MLEM, para. 2.D.2.c.(4)(c)) or hot pursuit (see MLEM, para. 2.D.2.c.(4)(b)3), Coast Guard policy typically permits the boarding of foreign vessels in navigation on the high seas or in innocent passage through the 12 NM U.S. territorial sea only with a Commandant Statement of No Objection (SNO) (see Enclosure (3) to MLEM, Decision Matrix 1). Under Article 220 of the United Nations Convention on the Law of the Sea, for pollution incidents occurring in the U.S. 200 NM exclusive economic zone (EEZ) but beyond the U.S. territorial sea, the Coast Guard may require foreign vessels to provide information necessary to establish whether a violation occurred. However, detention of foreign vessels for boarding and further investigation is not generally justified. When approach questions indicate that a

foreign vessel is bound for a U.S. port, it is usually preferable to allow the vessel to proceed into port where U.S. investigative and enforcement authority is greatest.

### 3. ARREST OF INDIVIDUALS.

- a. As outlined in the MLEM, Section 3-I-8, Coast Guard arrest authority under 14 U.S.C § 89 for criminal violations generally applies only on the high seas or waters over which the United States has jurisdiction. This means that the Coast Guard has no arrest authority ashore for federal environmental crimes except in very limited circumstances. The Coast Guard should coordinate with other Federal agencies, such as the FBI or EPA, to deal with shore-based environmental cases in which arrests may be necessary. CGIS and the District Legal Office should be consulted in these instances.
- b. Unless a federal arrest warrant has been obtained, an individual may only be arrested based on probable cause that the individual committed a federal felony (statute providing for imprisonment for more than one year) or for a federal misdemeanor (lesser crime providing for imprisonment for one year or less) that was committed in the arresting officer's presence. The guidance in Enclosure (3) to the MLEM should be followed regarding the need for CG flag, SNO or PD-27 clearance prior to arrest, particularly when dealing with foreign flag or stateless vessels.
- c. International law provides that only monetary penalties may be imposed for pollution violations committed by foreign vessels beyond the territorial sea. This is true even for pollution violations by persons aboard foreign vessels within the territorial sea, unless the pollution is proven to be "willful and serious."
- d. Coast Guard personnel are not required to make an arrest merely because they have a lawful basis for doing so. Indeed, effecting an arrest may needlessly complicate an ongoing law enforcement operation or criminal investigation. For this reason, it is suggested that, when practical, Coast Guard personnel consult with the cognizant District Legal Office prior to effecting an arrest. Once an arrest is made, Coast Guard personnel shall advise any arrested individuals of their Miranda rights prior to questioning them about any illegal activity. (Note: Rights advice need not be given to a suspect in custody if the suspect is not going to be questioned.) An individual in Coast Guard custody



shall be taken before a U.S. Magistrate without unnecessary delay.

4. **SEIZURE OF VESSELS.** Most U.S. pollution laws do NOT provide a statutory basis for seizure of vessels involved in pollution incidents. In some instances, such action may be warranted. Especially in cases involving foreign flag vessels, Coast Guard policy in the Maritime Law Enforcement Manual, COMDTINST M16274.1 (series), may require a Commandant Statement of No Objection or interagency coordination before seizure or detention of a vessel. Whenever any action is contemplated involving the arrest or seizure of a vessel, such action should be coordinated with the District Legal Office.

5. **SURETY IN LIEU OF WITHHOLDING CUSTOMS CLEARANCE.** Several, but not all, Federal environmental statutes provide authority for the Coast Guard request that the U.S. Customs Service withhold the vessel's customs clearance pending the filing with the Coast Guard of a bond or other surety satisfactory to the Coast Guard. This action is authorized if the Coast Guard has reasonable cause to believe that a vessel or its owner, operator, or person in charge, may be subject to a fine or civil penalty for a specified violation. When these provisions apply, all foreign vessels and U.S. commercial vessels departing on foreign voyages may be required to post a surety bond to provide security for payment of the maximum penalty that could be imposed for the violation. Once again, however, if it appears that criminal prosecution may be warranted, units should consult with the District Legal Office before such action is taken to ensure that all legal issues are considered.

- B. **FOCUS ON THE ELEMENTS OF THE OFFENSE.** Coast Guard personnel involved in the investigation of any case should focus on the elements required to establish environmental violations as outlined in Appendix I. Usually, the only difference between elements of proof of criminal violations and elements of proof of civil violations is the need to show criminal intent. Thus, any investigation that focuses on the elements of offense for the criminal violations will necessarily serve as a valid basis for civil penalties, assuming that all elements of the offense are shown with the exception of criminal intent. In all investigations, a systematic and comprehensive approach is necessary to discover, obtain and document sufficient admissible evidence to establish jurisdiction over the defendant and the offense, and to prove each element of the offense.

- C. **GENERAL CATEGORIES FOR EVIDENCE COLLECTION.** Enclosure (5) to the MLEM is a general checklist of information to obtain

in law enforcement investigations. In addition to the information on this general checklist, investigators in all environmental cases should collect evidence on the following:

1. **VESSEL NAVIGATION AND POSITION INFORMATION** - deck logs, charts, GPS printouts, etc.
2. **VESSEL REGISTRATION AND OTHER CERTIFICATES**
3. **VESSEL OWNERSHIP DATA** including any charter/operating agreements.
4. **CREW LIST.**
5. **VOYAGE RECORDS** - cargo manifest/passenger list and other data on the purpose of this voyage.
6. **MACHINERY/MAINTENANCE RECORDS** - engineering logs, system diagrams, equipment manuals
7. **POLLUTION RECORDS** - oil record book, garbage log, etc.

**D. GENERAL METHODS FOR DOCUMENTING POLLUTION INCIDENTS**

1. **VIDEO AND PHOTOS.** Photos, video, and prints of displays from infrared or radar sensors are often the most dramatic method of documenting pollution incidents.
  - a. If feasible, videotape the scene of the incident to depict the oil in the water and its proximity to the suspect vessel. If the sheen is trailing in the wake of the vessel, document on the film that the water at the bow of the vessel is clear. If the vessel is moored, document on the film that the area up-wind or up-current is clear. If the source of the pollution is visible on a vessel or facility, or if there is an oil or pollutant stain on the side of a vessel, be sure to record this and follow the path of the pollutant down to the waterline to show where the pollution entered the water.
  - b. For panoramic views, particularly with low light, ensure the video camera focus is set on infinity with the auto-focus off so that the camera won't "hunt" and produce an out-of-focus shot. Maneuver to avoid shooting into the sun and try to avoid the glare often associated with filming through an aircraft or vehicle window. Use the "date on screen" feature and switch to "time on screen" periodically.
  - c. While taping, take still shots of items of interest of 5-10 seconds in duration to ensure that the video camera is in FOCUS. The camera operator should use his or her voice to explain what is being photographed but without any personal opinions or extraneous comments.

- d. During investigations, particularly when conducting a boarding of a vessel, use videotape, still photography or detailed sketches to record locations of machinery, bilge compartments, bilge pumps, piping, slop tanks, and other relevant systems or equipment. This recordation of the bilge maintenance and discharge systems may be supplemented by annotated copies of schematics or diagrams. Videotapes, photographs or sketches should show the position of any pollution placards and operating instructions relative to the equipment and controls. [Generally, operational tests of equipment, sampling and other relevant activities should not be videotaped or photographed because of the inherent difficulty in attempting to capture all significant aspects of such activities on videotape or in photographs. The results of such tests or procedures should instead be fully and accurately recorded in the report to be filed by the personnel responsible for conducting the test or procedure.]
  - e. For all potential criminal prosecution cases, the videotape and/or film should be developed and reviewed immediately in order to assess the quality and completeness of the evidence, determine how it meshes with the other evidence developed in the case and assess what additional investigation might be warranted.
2. **WITNESS INTERVIEWS AND STATEMENTS.** Statements should be obtained from as many crew members, employees, and other potential witnesses as practicable. Thought should be given to the sequencing of such interviews so as to develop evidence logically and to maximize the effectiveness of later interviews. No representations should be made to a witness concerning whether a civil or criminal referral will result from the investigation or whether that witness (or company) is a potential subject of the investigation. Appropriate procedures should be followed for all witness interviews and a separate report should be prepared to record each interview. (See section 3.G., Witness Interrogation Procedures, below.)
3. **ENFORCEMENT CHECKLISTS AND NOTES.** In addition to utilizing the law enforcement Boarding Checklist in Enclosure (5) of the MLEM and any applicable marine inspection pollution incident checklists, a member of the boarding or pollution incident investigation team should be designated to serve as a report writer to ensure that the observations of the enforcement personnel and any actions taken during the investigation are accurately and comprehensively recorded. Members of the team should bring significant observations and

actions to the attention of the report writer who should keep detailed notes regarding the pollution incident and the conduct of the investigation. The report should also include a diagram depicting the path of the discharge, the area of pollution, the location of the vessel and the arrangement of the vessel's relevant equipment. Boarding or pollution incident investigation personnel should call the District Legal Office to discuss any unresolved questions.

4. **POLLUTION SAMPLES.** Samples of oil, garbage, plastics or other pollutants should be obtained from the water and from known or suspected source locations. Two key considerations in this important area of documentation are avoiding contamination of the samples and utilizing strict chain of custody procedures. (See section 3.H., Sampling, below).

**E. MARINE POLLUTION SIGHTING/ENFORCEMENT REPORT.** Rapid transmission of accurate information from field units on scene at the pollution site back to the personnel evaluating the enforcement options is often critical for a successful criminal prosecution. The MARINE POLLUTION (MARPOL) SIGHTING /ENFORCEMENT REPORT FORMAT, Appendix II, is designed for that purpose. A sample MARPOL SIGHTING/ENFORCEMENT REPORT message using the report format is also provided in Appendix II. Complete information on an incident will be needed eventually, however, an initial report of the incident should be sent as soon as possible. Do not presume facts or record unverified information merely to complete the report. Do not delay the initial report because of incomplete information.

**F. CHAIN OF CUSTODY PROCEDURES.** When evidence is being collected to support civil or criminal charges, it is important to maintain a continuous chain of custody from the time the evidence is collected until it is analyzed. All evidence collected should be placed in an appropriate container (e.g., a sample jar for oil samples; a sealable plastic bag for samples of garbage, plastic or other pollutants, etc.) and the container should then be sealed with evidence tape, which should be initialed and dated by the person who collected the sample. Transfer of custody should be documented by a written entry on a chain of custody control document. When a Coast Guard Investigative Service Special Agent is involved in a case, original evidence should normally be transferred to them. All original evidence should be secured in a locked evidence locker (locked refrigerator for oil) until transfer/disposition instructions are received from the prosecutor. Samples of oil taken as evidence in a case should be sent by private courier or other secure means to the COIL lab as soon as practicable. Access to, and the release of, evidence from the evidence locker should be

controlled by a single individual who should maintain a log recording evidence received and evidence released.

**G. WITNESS INTERROGATION PROCEDURE.** Enforcement personnel should attempt to interview all persons likely to have knowledge of a pollution discharge. Keep in mind the following:

1. Rights warnings **DO NOT** have to be given to civilians unless the person is being questioned and is "in custody," which is normally after they have been placed under arrest or when a "reasonable person" believes he or she is not free to leave. To the extent possible, individuals should be kept separated and/or under observation prior to being interviewed to minimize the opportunity to collaborate on their statements. Witnesses should be interviewed individually to avoid the commingling of recollections and to avoid having witnesses intimidated by the presence of persons who may have been involved in wrongdoing. Enforcement personnel must be alert for, and document inconsistencies in, the stories told by witnesses in response to official inquiries. Witnesses should be carefully questioned about any aspects of their statements that don't make sense. It is much more difficult to interrogate a reluctant witness about evidence of a crime than to conduct a normal interview. Whenever possible, an experienced marine investigator or CGIS Special Agent should be part of each interview team.
2. Don't forget to ask about the failure to report the discharge, any mechanical problems or casualties that may have caused or created the discharge, and any false log entries or false information provided to the Coast Guard in response to an official inquiry. An individual report should be made by the marine investigator or the CGIS Agent to record each witness interview. No statement should be made to a witness or a corporate representative that could be interpreted to limit the scope of the ensuing investigation. For example, do not tell a witness that the investigation is only administrative or only civil in nature. Any investigation of a pollution incident could result in an administrative, civil or criminal enforcement action. No statement should be made to any witness or corporate representative indicating that the witness or the corporation is not a subject or target of the investigation. No witness or corporation can be advised of its status in connection with the investigation until all of the relevant facts are known and after the prosecutor has been consulted with respect to that particular witness or corporation.

**H. SAMPLING.** Samples collected and subjected to laboratory analysis is one of the best ways to prove a substance in the water is oil or a hazardous substance, and to link it to a suspected source. Because oil discharges are the type of discharge most commonly encountered by Coast Guard personnel, this section focuses on oil sampling. Sampling of hazardous substances may require special expertise, and Coast Guard units should identify individuals who are trained in taking such samples and would be available on short notice to conduct the sampling.

**1. SAMPLING PLAN.** A systematic sampling plan helps to avoid contamination and to ensure that the sample collection and handling withstand the procedural and scientific scrutiny of a criminal trial. To establish the requisite connection between the spill and a suspect vessel, samples of pollution should be taken from the surface of the water and from all of the possible sources onboard the suspect vessel. Procedures for taking samples from the surface of the water will vary with the sheen size and thickness, on scene weather and sea state, the type of petroleum product, and all necessary personal safety precautions. Shipboard sample procedures will depend on the number of tanks and bilges requiring sampling, and the access to those tanks and bilges.

**2. SAMPLING PROCEDURES.**

- a.** Sampling equipment and containers should be as clean as possible prior to attempting to obtain a sample. New sample jars should be used whenever available. Coast Guard MSOs should be able to provide sample jars to other operational units as well as necessary training. Disposable gloves should be worn and changed if they become oily and could contaminate later samples. Once reusable equipment has been exposed to oil, it should be cleaned before being used again.
- b.** To minimize the potential for contamination, water surface samples should be taken at the bow of the sampling vessel as it moves up-wind through the sheen.
- c.** A written record should also be kept to document the time, date, sample number, station number or location (if ocean samples are used include the latitude/longitude to establish jurisdiction), name of sample taker, case identification and any other pertinent data. Additional information concerning visual observations of the substance sampled and

observed smells/odors should also be recorded.

- d. Once samples are taken, they need to be placed in sealable containers that are then sealed with evidence tape and initialed and dated by the sampler. A continuous chain of custody should be maintained from the time a sample is taken until analyzed.

3. **SAMPLE TAKING TECHNIQUES.** Oil spill samples are normally taken in one of two ways. They are either collected directly into a clean, dry glass sample jar or are collected on teflon strips/nets and inserted into a clean, dry glass sample jar. Whenever samples are collected directly into sample jars, the jar should be submerged to its rim to allow water and sheen (sludge, mousse, etc.) to run into the jar (the sample taken should be of a sufficient quantity that it is visible to the naked eye). If teflon strips/nets are used, they should be attached to a pole and swept across the sheen to sufficiently "coat" the teflon with sample product. The strips/nets should only be handled while wearing gloves. When transferring the sample to a jar, it should only be handled with either a pair of locking tweezers or a hemostat. Marking and identification procedures should be in accordance with established procedures.

#### 4. **DESIRED SAMPLES.**

- a. **CONTROL SAMPLES.** A clean blank "control" sample, which is a clean, empty sample jar with a sample of a teflon strip/net if used, should be obtained as a baseline for comparison with the spill and suspect samples:
- b. **SHEEN SAMPLES.** Oily water samples taken from within the major sheen patches. When time and resources permit, samples should be taken from three separate locations with the sheen.
- c. **SAMPLES FROM SUSPECT VESSEL(S).** Potential source locations on board a vessel should be identified and a sample should be taken from each location. The following list of sampling sites is not all inclusive:
  - **Oily Water Separator (OWS).** A sample should be taken from the effluent stream without contamination from outside sources (process will be dependent on the type of OWS).
  - **Machinery Space Bilges.** Machinery spaces include engine rooms, pump rooms, after steering, pipe tunnels, etc. Samples from these spaces are generally obtained by lowering sample jars through opened deck plates, but teflon strips can also be

used to wipe areas too shallow to get a scoop sample. A bilge water sample should be obtained from each separate machinery space. If this is not possible, take samples from each separate area of contamination.

- **Tanks (cargo, fuel oil, lubricating oil, and "slop" tanks).** Tanks are used to store various liquids including cargo, fuel, lubricating oils, and various types of liquid wastes (stored in "slop" tanks). These spaces may be cargo tanks, double-bottomed tanks integral to the hull, and non-integral or free standing tanks. Take a sample from each separate tank suspected of being involved with a discharge. On tank vessels, cargo tanks are usually sampled through large deck top openings called ullages. A sample jar may be lowered into the tank on a clean string to obtain the sample. Sounding tubes may provide the easiest access to other tanks. If ullages or sounding tubes are not available or easily accessible, other possible avenues for accessing tanks are the removal of gasketed tank covers or the breaking open of pipe joints.
- Cargo monitor sampling drains (if applicable).
- Discharge points on the outside skin of the vessel.

**I. FOCUS OF THE ONBOARD INVESTIGATION IN OIL AND HAZARDOUS SUBSTANCE DISCHARGE CASES.** A timely investigation onboard a suspect vessel is often critical to obtain evidence to conclusively link the vessel to oil or hazardous substances observed in the water. If time permits, marine inspectors from the nearest MSO should participate in the boarding. In addition to collecting the general categories of evidence outlined in section 3 above, investigators should consider the following:

1. When bilge pumping is suspected, examine the bilge piping system, checking carefully for overboard discharge connections that bypass the Oily Water Separator (OWS).
  - Closely examine the OWS and check its configuration against the diagrams in the OWS Operations Manual. Is it obviously inoperative? Does the OWS have a label indicating approval under 33 C.F.R. § 162.050 or the current IMO MEPC Circular listing approved equipment?
  - Has the equipment been bypassed or have unauthorized modifications made? If the system has bypasses, are the shut off valves open, closed or padlocked/sealed closed?



- Have one of the responsible crew members describe the proper operation of the OWS and check that description against the Manual's description. Require an operational test and check alarms and automatic valves for proper operation. Visually check overboard discharge during the test. Videotape the crew members' descriptions.
  - Videotape the bilge piping system and any areas with oily water in the bilges using the procedures discussed above. Get close up shots of any equipment or the main propeller shafts dripping oil into the bilges. Videotape any tests of the OWS or other machinery.
2. Review and obtain the originals or certified copies of relevant portions of the following:
- Oil Record Book (ORB).
  - Rough Engine Log and Machinery/Maintenance Records. These records may indicate evidence of equipment malfunction or operation without the required ORB entries.
  - OWS monitor printouts. Many OWS monitors have continuous printouts of the oil concentration of discharges.
  - Piping Diagrams (indicating valves and their position).
  - Bilge pumping and piping system. The actual system should match the piping diagrams.
  - International Oil Pollution Prevention Certificate (IOPP) and supplement. The installed separating and monitoring equipment must be as identified on the IOPP Certificate.
  - OWS Operations Manual. This manual includes equipment arrangement, maintenance requirements, operating parameters and calibration and test procedures for the alarm on the OWS.
  - Message traffic. TELEXs or other message traffic that provides information on machinery malfunctions.
  - Photograph of placard stating "Discharge of Oil Prohibited" in the language of the vessel's crew and posted conspicuously in each machinery space and at the bilge or ballast pump control station. Photographs of other documents showing knowledge of

the law, such as copies of the regulations on the bridge of larger vessels, are also helpful.

3. Interview vessel personnel and/or witnesses and if possible obtain statements covering critical points. Ensure that any crew members who regularly maintain the Oil Record Book are interviewed.
4. In cases involving hazardous substances, investigators should ensure that they are particularly concerned with identification of the substances that may have been discharged. In this regard, it is important to collect whatever documentary evidence is available on board the vessel. Investigators should collect copies of the Cargo Manifest, bills of lading and chemical data sheets that should be aboard the vessel. In addition to identifying potential personal health or safety hazards associated with the substances, investigators may be able to determine the quantity of substance discharged in order to show it was a reportable quantity.
5. In cases involving garbage, investigators should examine the records that are required to be kept on vessels detailing the discharge or disposal of garbage from the vessel. For cruise ships or other vessels that have large numbers of passengers on board, the investigator should establish the total number of persons on board through examination of passenger lists or crew manifests. Photographs of placards or other posted notices of discharge restrictions should be taken to document knowledge on the part of the crew. Additionally, waste management plans should be examined to determine policies for proper handling of garbage or other wastes in order to show culpability of particular crew members or negligence in failing to follow policy. Grinders or comminuters, as well as other disposal equipment such as incinerators if used, should be examined to determine whether they are properly operating and used. Finally, passengers and crew should be interviewed to determine observations that they may have made regarding disposal of garbage and wastes.

APPENDIX I  
ELEMENTS OF ENVIRONMENTAL CRIMES

## **OIL AND HAZARDOUS SUBSTANCES POLLUTION**

### **A. BACKGROUND**

The majority of the environmental violations encountered by the Coast Guard involve the discharge of oil or hazardous substances from vessels or facilities. The Clean Water Act generally prohibits the discharge of oil and hazardous substances. See, e.g., 33 U.S.C. § 1321(b)(3). Federal Regulations in 33 C.F.R. Parts 151-159 also provide stringent requirements concerning the equipment and procedures governing the transfer and storage of oil and hazardous substances on vessels and facilities. Given the high standard of cognizance and care required, many illegal discharges are likely to be knowing, or at least negligent, and therefore criminal.

1. Negligent or knowing discharges of oil or hazardous substances in violation of 33 U.S.C. § 1319(c) are the most common offenses. It may be possible to charge these discharge violations in other ways, such as violations of 33 C.F.R. Part 151, which is enforceable under 33 U.S.C. § 1908(a), the Act to Prevent Pollution from Ships. However, if Coast Guard field enforcement personnel proceed to collect evidence to prove the elements for the discharge offense under 33 U.S.C. §§ 1319(c) and 1321(b)(3), that should normally be sufficient until more detailed guidance is received from the Legal Officer or prosecutor.

2. Failure to report a discharge immediately and knowingly making a false statement in a required report or document in connection with a discharge are separate crimes under 33 U.S.C. §§ 1321(b)(5) and 1319(c)(4) respectively.

3. In addition to the reporting requirements in the Clean Water Act, there are also reporting requirements for discharges of oil under the Act to Prevent Pollution from Ships and for discharges of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

### **B. ELEMENTS OF PROOF AND SPECIAL CONSIDERATIONS FOR SPECIFIC OFFENSES**

A listing of the elements to be established and some special considerations for proof of specific types of marine pollution offenses are provided on the following pages. Each category of offense is listed on a separate page to facilitate reproduction and use in the field by enforcement personnel.

## DISCHARGE OF OIL OR HAZARDOUS SUBSTANCES UNDER THE CLEAN WATER ACT

### ELEMENTS OF OFFENSE:

The elements of the crime of unlawful discharge of oil or a hazardous substance that must be proved beyond a reasonable doubt to obtain a conviction for a violation of 33 U.S.C §§ 1319(c) and 1321(b) (3) are outlined below.

- **Person** - individual or corporation (including employees or agents acting on their behalf).
- **Knowing Conduct or Negligent Act or Omission** (that results in a discharge) - Simple negligence (as opposed to gross negligence) is all that should be required to establish the misdemeanor offense. An act or omission is negligent if it results from a failure to use reasonable care, which is the care that a reasonable person would use under the circumstances. A knowing discharge is a felony. A person acts knowingly if that person performs the acts that constitute the violation intentionally and not as a result of accident or mistake. The Government need not show that the suspected violator knew that the action was unlawful. If a person knows at the time that the act places another person in imminent danger of death or serious bodily injury, an even greater penalty is authorized.
- **Discharge** - spill, leak, or pump into the water or adjoining shoreline. We must establish that the defendant's vessel or facility is the **source** of the pollution via observation, matched samples from the water and source, etc. Obtain photos and other evidence to exclude other likely sources and rebut claims that the suspect just passed through an existing sheen, or that the sheen drifted down on a docked vessel.
- **Location - U.S. Navigable Waters or Adjoining Shoreline, or Contiguous Zone, or in Connection with Activities Under the Outer Continental Shelf Lands Act (OSCLA) or Deepwater Port Act,** - Criminal charges will normally be based on a discharge into waters within 12 NM of the U.S., including into or along the banks of the navigable waters of the U.S. In addition, discharges are prohibited if they occur as a result of activities regulated under the authority of OSCLA or the Deepwater Port Act. In addition, the discharge prohibition applies if the discharge may affect natural resources belonging to the United States, including resources in the U.S. 200 nautical mile EEZ under the Magnuson Fishery Conservation and Management Act. For this reason, all significant oil pollution within the U.S. 200 NM EEZ should be documented, including detailed position information on the sheen and the track of potential source vessels.

• **Oil or Hazardous Substance** (or other pollutant) - Oil includes both petroleum and non-petroleum oils (mineral/vegetable). Video or statements of the appearance of the sheen to an experienced observer may suffice to establish that the pollutant observed in the water is "oil" but samples are preferred if available. Hazardous substances are those listed at 40 C.F.R. Part 116, and generally include dangerous chemicals. See also 33 U.S.C. § 1319(c)(7). Samples or cargo manifests are often critical to establish that the pollution is a hazardous substance. It is also a crime to discharge a "pollutant" into the water except pursuant to a permit. A pollutant is broadly defined to include such materials as dredge spoil, solid waste, rock, sand, sewage, agricultural waste, and even heat. However, it does not include sewage from a vessel included under 33 C.F.R. Part 159.

• **Quantity that may be harmful** - According to 40 C.F.R. § 110.3, any discharge of oil that produces a visible sheen on the water "may be harmful". From 3-12 NM offshore, MARPOL has a narrow exception permitting discharges of less than 15 ppm through an oily water separator with a bilge monitor and alarm, but, generally speaking, this amount of oil will not create a sheen. For discharges outside 12 NM but within the U.S. 200 NM EEZ, the U.S. would also have to prove the discharge "may affect" U.S. "natural resources," and the exception for discharges made in accordance with the conditions of MARPOL would also apply. Reportable quantities of hazardous substances are listed in tables in 40 C.F.R. § 117.

#### **MAXIMUM CRIMINAL CONSEQUENCE:**

• **Knowing Discharge** - felony - up to 3 years in jail and/or criminal fine up to \$250,000 for an individual or \$500,000 for an organization. If knowing endangerment (imminent danger of death or serious bodily harm) up to 15 years in jail and/or criminal fine up to \$250,000 for an individual or \$1,000,000 for an organization.

• **Negligent Discharge** - misdemeanor - up to 1 year in jail and/or criminal fine up to \$100,000 for an individual or \$200,000 for an organization.

The above fines are based on the Alternative Fines Act in 18 U.S.C. § 3571, which also provides that a person or organization may be fined up to twice the pecuniary loss or pecuniary gain caused by a violation. This "loss" could include response costs and all damages, including those to natural resources, resulting in a much larger fine than would otherwise be available.

#### **ADDITIONAL CONSIDERATIONS FOR THIS OFFENSE:**

Traditional crimes in Title 18, U.S. Code, that may be involved in pollution incidents include conspiracy (§ 371), fraud,

obstruction of justice (§§ 1501-1517), and fraud or knowing use of false statements or documents (§ 1001).

Additionally, several maritime offenses in Titles 33 and 46, U.S. Code, may also be involved. These could include:

- 46 U.S.C. § 2302(b) - gross negligence in the operation of a vessel.

- 46 U.S.C. § 10908 - sending a U.S. vessel to sea in an unseaworthy condition.

- 46 U.S.C. § 3718 - willful and knowing violations of requirements for the carriage of dangerous cargoes.

- 33 U.S.C. § 1232(b) - the requirements for ports and waterways safety in 33 C.F.R. 160-168. For example a violation of 33 C.F.R. § 160.215 for failure to notify the Coast Guard of a hazardous condition that may affect the safety of any vessel or shore structure, or the environmental quality of any U.S. waters.

- 33 U.S.C. § 1321(j) - pollution prevention regulations in 33 C.F.R. Parts 151-159 (violations generally only provide for civil penalties).

See also 16 U.S.C. § 707(a) - pollution which kills migratory birds.

**FAILURE TO REPORT A DISCHARGE OF OIL OR HAZARDOUS SUBSTANCES  
UNDER THE CLEAN WATER ACT**

**ELEMENTS OF OFFENSE:**

The elements of the crime of failure to report an unlawful discharge of oil or a hazardous substance that must be proven beyond a reasonable doubt to obtain a conviction for a violation of 33 U.S.C. § 1321(b)(5) are outlined below.

- **Person** - individual or corporation.
- **In Charge** of a vessel or facility.
- **From which oil or a hazardous substance is discharged in a quantity that may be harmful** (sheen test for oil, reportable quantity for hazardous substances).
- **Into U.S. navigable waters, contiguous zone or adjoining shoreline.**
- **Fails to immediately notify** the appropriate Federal agency. (For oil in the water, notice may be given to the National Response Center in CGHQ at (800) 424-8802 or the nearest Coast Guard unit. See 33 C.F.R. §§ 153.203 and 40 C.F.R. §§ 110.10 and 300.300(b)).
- **As soon as he has knowledge of the discharge.**

**MAXIMUM CRIMINAL CONSEQUENCE:**

- **Felony** - up to 5 years in jail and/or criminal fine up to \$250,000 for an individual or \$500,000 for an organization.

The fine is based on the Alternative Fines Act in 18 U.S.C. § 571, which also provides that a person or organization may be fined up to twice the pecuniary loss or gain caused by a violation.

**ADDITIONAL CONSIDERATIONS FOR THIS OFFENSE:**

- 33 U.S.C. § 1321(b)(5) prohibits the use of spill notification in criminal prosecutions against "natural persons". However the information may be used against a corporate defendant or against individuals other than the person who made the notification.
- Note that it is a felony for any failure to report. This fact may actually make it much harder to charge someone with failure to notify in minor discharge cases since courts are often reluctant to impose a very severe penalty for a minor incident.



**FALSE STATEMENT IN A REPORT OR DOCUMENT OR TAMPERING WITH A  
MONITORING DEVICE REQUIRED UNDER THE CLEAN WATER ACT, 33 U.S.C.  
§ 1319(c)(4)**

**ELEMENTS OF OFFENSE:**

- **Person** - individual or corporation
- **Makes a material statement, representation, or certification**  
(A material statement is one that has the capability of affecting the exercise of agency authority, even if it did not in fact affect the agency).
- **In any application, record, report, plan, or other document**  
filed or required to be maintained under the FWPCA.
- **Knowing that the statement, etc., is false** (statement must be intentionally made but it is not required that the Government prove an intent to deceive).
- **OR**
- **Person knowingly tampers with or renders inaccurate any**  
**monitoring device** required to be maintained under the FWPCA.

**MAXIMUM CRIMINAL CONSEQUENCE:**

- **Felony** - up to 2 years in jail and/or criminal fine up to \$250,000 for an individual or \$500,000 for an organization.

The fine is based on the Alternative Fines Act in 18 U.S.C. § 571, which also provides that a person or organization may be fined up to twice the pecuniary loss or pecuniary gain caused by a violation.

**ADDITIONAL CONSIDERATIONS FOR THIS OFFENSE:**

- See also the general false statement offense in 18 U.S.C. §1001 and the general obstruction of justice offenses in 18 U.S.C §§ 1505, (obstruction of agency proceeding), 1510 (bribery), 1512 (witness tampering), and 1513 (retaliating against an informant).

OIL DISCHARGES UNDER THE ACT TO PREVENT POLLUTION FROM SHIPS,  
33 U.S.C. §§ 1901-1912

ELEMENTS OF OFFENSE:

DISCHARGES WITHIN 12 NM OF LAND BY SHIPS OTHER THAN OIL TANKERS  
OR FROM MACHINERY SPACE BILGES OF AN OIL TANKER

- **Person**
- **Knowingly** A person acts knowingly if that person performs the acts that constitute the violation intentionally and not as a result of accident or mistake. The Government need not show that the suspected violator knew that the action was unlawful.
- **Discharges Oil or Oily Mixtures** into the sea less than 12 nm from land (Note: Oil under APPS is only petroleum-based oil).
- **From a vessel that is not an oil tanker** that is subject to Coast Guard regulations issued under APPS **or from the machinery space bilges of an oil tanker**
- **And any one** of the following conditions were not met:
  - The oil or oily mixture **did not originate** from cargo room pump bilges;
  - The oil or oily mixtures were **not mixed with oil cargo residues**;
  - The **oil content** of the effluent was **less than 15 parts per million**;
  - The ship had in operation **oily-water separating equipment, a bilge monitor, bilge alarm** or combination thereof as required by regulations;
  - The oily-water separating equipment is equipped with an approved **15 parts per million bilge alarm**.

DISCHARGES MORE THAN 12 NM OF LAND BY SHIPS OTHER THAN OIL  
TANKERS OR FROM MACHINERY SPACE BILGES OF AN OIL TANKER

- **Person**
- **Knowingly** A person acts knowingly if that person performs the acts that constitute the violation intentionally and not as a result of accident or mistake. The Government need not show that the suspected violator knew that the action was unlawful.
- **Discharges Oil or Oily Mixtures** into the sea more than 12 nm from land (Note: Oil under APPS is only petroleum-based oil).

- From a vessel that is not an oil tanker that is subject to Coast Guard regulations issued under APPS or from the machinery space bilges of an oil tanker
- And any one of the following conditions were not met:
  - The oil or oily mixture **did not originate** from cargo room pump bilges;
  - The oil or oily mixtures were **not mixed with oil residues**;
  - The ship is **not within a special area** (Special areas are established at 33 C.F.R. § 151.06);
  - The ship is **proceeding enroute**;
  - The **oil content** of the effluent was **less than 100 parts per million**; and
  - The ship had in operation **oily-water separating equipment, a bilge monitor, bilge alarm** or combination thereof as required by regulations.

#### DISCHARGES FROM TANK VESSELS

- Person
  - **Knowingly** A person acts knowingly if that person performs the acts that constitute the violation intentionally and not as a result of accident or mistake. The Government need not show that the suspected violator knew that the action was unlawful.
- Discharges Oil or Oily Mixtures into the sea
  - From a cargo tank, slop tank or cargo pump room bilge on a tank vessel subject to regulations issued under the authority of APPS
  - And any one of the following conditions are not met:
    - The tanker was **more than 50 nautical miles** from the nearest land;
    - The ship was **proceeding enroute**;
    - The instantaneous rate of oil content of the discharge does **not exceed 60 liters per nautical mile**;
    - If the ship is an **"existing vessel"** (as defined at 33 C.F.R. § 151.05), the total quantity of oil discharged **did not exceed 1/15,000** of total quantity of the cargo of which the discharge formed a part; if a **"new vessel"** (as defined at 33 C.F.R. § 151.05), the total quantity of oil discharged into the sea **did not exceed 1/30,000** of the total quantity of

the cargo of which the discharge formed a part;

- The discharge was **done in accordance with the provisions of 33 C.F.R. § 157.37(a)(5)**;
- The **vessel has in operation a cargo monitor and control system** that meets the requirements of 33 C.F.R. § 157.12, except that the system may operate manually if it meets the requirements of 33 C.F.R. § 157.37(a)(6); and
- The discharge took place **outside a special area** (Special areas are established at 33 C.F.R. § 151.06).

There are also requirements for the discharge of "clean ballast" and "segregated ballast" from oil tankers. These requirements are not set out here, but are found at 33 C.F.R. § 157.43.

The requirements for oil tankers apply only to oceangoing tank vessels of more than 150 gross tons. While these discharge restrictions apply to all tank vessels, jurisdictional issues would, for the most part, preclude criminal prosecution of discharge violations involving foreign flag tank vessels under APPS.

#### **MAXIMUM CRIMINAL CONSEQUENCE:**

- Felony - not less than 5 years and up to 10 years in jail and/or criminal fine up to \$250,000 for an individual or \$500,000 for an organization.

The fine is based on the Alternative Fines Act in 18 U.S.C. § 3571, which also provides that a person or organization may be fined up to twice the pecuniary loss or pecuniary gain caused by a violation.

#### **ADDITIONAL CONSIDERATIONS FOR THIS OFFENSE:**

- See also the general false statement offense in 18 U.S.C. § 1001 and the general obstruction of justice offenses in 18 U.S.C §§ 1505, (obstruction of agency proceeding), 1510 (bribery), 1512 (witness tampering), and 1513 (retaliating against an informant).
- The Act to Prevent Pollution from Ships provides for, in the discretion of the court, an amount equal to not more than ½ the amount of any fine awarded to be paid to the person giving information leading to conviction

**FAILURE TO REPORT A DISCHARGE UNDER THE ACT TO PREVENT  
POLLUTION FROM SHIPS (APPS)**

There are several different provisions in APPS and in the MARPOL Convention, which APPS establishes as U.S. law, that require notification of discharge incidents. APPS itself requires reports of oil discharges and other incidents (see 33 U.S.C. § 1906), the MARPOL Convention has its own reporting requirements, and Coast Guard regulations include reporting provisions (see 33 C.F.R. § 151.15 (oil); 33 C.F.R. § 151.65 (garbage and hazardous wastes)). The reporting requirements apply to U.S. flag vessels anywhere and to foreign flag vessels located in the navigable waters of the U.S. or at a port or facility under U.S. jurisdiction.

**ELEMENTS OF OFFENSE:**

- **Master or other person in charge**
- **Of a ship** subject to the reporting requirements in APPS, MARPOL or Coast Guard regulations
- Involved in an **incident** involving
- a **discharge of oil** or oily mixtures (**or NLS or garbage**) not authorized under MARPOL or Coast Guard regulations
- the **probability of a discharge of oil** or oily mixtures (**or NLS or garbage**)
- a **discharge permitted** because it was for the purpose of securing the safety of the ship or saving life at sea or resulted from damage to the ship or its equipment.
- Who **knowingly fails to report** the particulars of the incident **without delay** and to the **fullest extent possible**.

**MAXIMUM CRIMINAL CONSEQUENCE:**

- Felony - not less than 5 years and up to 10 years in jail and/or criminal fine up to \$250,000 for an individual or \$500,000 for an organization.

The fine is based on the Alternative Fines Act in 18 U.S.C §3571, which also provides that a person or organization may be fined up to twice the pecuniary loss or pecuniary gain caused by a violation.

**ADDITIONAL CONSIDERATIONS FOR THIS OFFENSE:**

- The term "without delay" means that the report was made by radio if possible, or otherwise by the fastest means available.

- In order to report the incident to the "fullest extent possible," the report must include the identity of the ship, the time and date of the incident's occurrence, the geographic position of the ship when the incident occurred, the wind and sea condition prevailing at the time of the incident, relevant details concerning the condition of the vessel, and an estimate of the quantity of oil or oily mixtures (or garbage) discharged or likely to be discharged.

- See also the general false statement offense in 18 U.S.C. § 1001 and the general obstruction of justice offenses in 18 U.S.C. §§ 1505, (obstruction of agency proceeding), 1510 (bribery), 1512 (witness tampering), and 1513 (retaliating against an informant).

- The Act to Prevent Pollution from Ships provides for, in the discretion of the court, an amount equal to not more than one-half of the amount of any fine awarded to be paid to the person giving information leading to conviction

**FAILURE TO MAKE EMERGENCY NOTIFICATIONS FOR DISCHARGES OF  
HAZARDOUS SUBSTANCES UNDER THE COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA), 42 U.S.C.  
§ 9603**

**ELEMENTS OF OFFENSE:**

- A **hazardous substance** - Hazardous substances under CERCLA are more comprehensive than under the Clean Water Act. A complete list of substances covered by CERCLA is available in 40 C.F.R. Part 302, Table 302.4.
- In an amount equal to or greater than a **reportable quantity** - reportable quantities are identified in 40 C.F.R. Part 302, Table 302.4.
- Was **released into the environment**
- From a **facility or vessel**
- The release was **not a federally permitted release; and**
- The **person in charge** of the vessel or facility
- **Failed to notify** the appropriate agency of the U.S. Government **immediately** as soon as he or she became aware of the release.

**MAXIMUM CRIMINAL CONSEQUENCE:**

- Felony - not more than 3 years in jail and/or criminal fine up to \$250,000 for an individual or \$500,000 for an organization.

The fine is based on the Alternative Fines Act in 18 U.S.C §3571, which also provides that a person or organization may be fined up to twice the pecuniary loss or pecuniary gain caused by a violation.

**ADDITIONAL CONSIDERATIONS FOR THIS OFFENSE:**

- Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, pollutant, or contaminant). It does not include: a federally permitted release; or, emissions from engine exhaust or motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engines.
- Environment means (1) the navigable waters of the U.S. and the contiguous zone and the waters of the EEZ, and (2) any other surface water, groundwater, drinking water supply, land

surface or subsurface strata, or ambient air within the U.S. or under the jurisdiction of the U.S.

- A person in charge is not just an owner or operator, but any person who is responsible for the operation of the vessel or facility from which there is a release. One court has interpreted this to mean any person, even if of relatively low rank at the facility or on the vessel, who was in a position to detect, prevent, and abate the release of a hazardous substance because he or she was in charge of the facility or vessel.
- The government is required to show that the person charged with failure to notify had knowledge of a release into the environment of what in fact was a reportable quantity of a hazardous substance. The defendant need not have knowledge of CERCLA or that the failure to notify was a violation of CERCLA.
- Note that it is a felony for any failure to report. This fact may actually make it much harder to charge someone with failure to notify in minor release cases since courts are often reluctant to impose a very severe penalty for a minor incident.



## **GARBAGE OR REFUSE DISCHARGES FROM SHIPS AND OCEAN DUMPING**

### **A. BACKGROUND.**

The discharge of garbage from vessels is regulated under both the Clean Water Act, 33 U.S.C. § 1319(c), and the Act to Prevent Pollution from Ships, which implements the requirements of the International Convention for the Prevention of Pollution from Ships (MARPOL), Annex V, (33 U.S.C. § 1908(a), 33 C.F.R. Parts 151, 157 and 158). Dumping any garbage within three miles of the U.S. shore or into inland waters is illegal. Further, it is illegal to dump garbage greater than one inch in size between 3 and 12 miles from the U.S. coast. Any disposal of plastic into the water anywhere (including the high seas) is an offense and U.S. jurisdiction over foreign vessels for this offense extends to the limits of the U.S. 200 NM EEZ. The Ocean Dumping Act requires an EPA permit under 40 C.F.R. Parts 220-224 for the dumping of all types of materials (garbage, wastes, etc.) brought from the U.S. or into U.S. waters. The Refuse Act, 33 U.S.C. §§ 407, 411, provides criminal penalties for any discharge of refuse into the navigable waters of the U.S. regardless of the exercise of due care.

### **B. ELEMENTS OF PROOF AND OTHER CONSIDERATIONS FOR SPECIFIC OFFENSES.**

1. DISCHARGE OF GARBAGE FROM VESSELS
2. OCEAN DUMPING ACT.
3. REFUSE ACT.

DISCHARGE OF GARBAGE FROM VESSELS UNDER ACT TO PREVENT  
POLLUTION FROM SHIPS (APPS) (33 U.S.C. §§ 1901-1912)

ELEMENTS OF OFFENSE:

- Person or company
- Knowingly - most discharges of garbage are knowing acts
- Discharges
- From a vessel
- Garbage
- containing **plastic**
  - prohibited anywhere for US vessels
  - prohibited within the US 200 NM EEZ for foreign vessels
- containing **non-plastic**
  - within 3 NM - no discharge of any garbage
  - 3-12 NM - only garbage ground to less than 1"
  - must be beyond 25 NM to discharge dunnage and packing materials that float

MAXIMUM CRIMINAL CONSEQUENCE:

- Felony - up to 10 years in jail and/or criminal fine up to \$250,000 for an individual or \$500,000 for an organization.

The fine is based on the Alternative Fines Act in 18 U.S.C §3571, which also provides that a person or organization may be fined up to twice the pecuniary loss or pecuniary gain caused by a violation.

ADDITIONAL CONSIDERATIONS FOR THE OFFENSE:

- APPS, 33 U.S.C. § 1908(e), provides that if reasonable cause exists to believe that a ship, its owner, operator, or person in charge **MAY BE** subject to a fine or civil penalty under APPS, the vessel's Customs clearance can be withheld pending the filing of a bond or other security **satisfactory to the Coast Guard**. For apparently criminal violations a surety bond should normally be obtained from vessels likely to depart from U.S. waters to provide security for the maximum penalty which could be imposed for the violation.
- APPS, 33 U.S.C. § 1908, gives the Court discretion to award up to ½ of the fine awarded to the person giving information leading to conviction.

- Waste Management Plans. 33 C.F.R. § 151.57 requires that vessels forty feet or more in length and engaged in commerce or equipped with a galley must have a waste management plan. This plan must be in writing and describe procedures for collecting, processing, storing and discharging garbage. It must also designate the person responsible for carrying out the plan.
- Statements from vessel personnel and/or witnesses are often critical. In questioning crew members it should be established that in performing the acts that led to the discharge they were not acting independently for their own personal benefit, but rather as a member of the crew on behalf of the vessel or their employer. If the individual was acting solely for his/her own personal benefit, completely independent from doing his/her job the employee may be solely liable for the violation.
- Items of garbage that have distinctive identifying marks (ship logo, cruise plan of the day, etc.) may link the garbage to the suspect vessels. Matching the type of plastic garbage bags found on a suspect vessel with those recovered from the water may also help to build a link.

## OCEAN DUMPING

### BACKGROUND:

Title II of the Marine Protection, Research, and Sanctuaries Act is known as the Ocean Dumping Act. Under 33 U.S.C. §§ 1411 and 1415(b), the dumping into the ocean of all types of materials (garbage, wastes, etc.) transported from the U.S. or into U.S. waters is generally prohibited without an EPA permit. No proof of actual dumping is required, only that a person transported material with the intention that it be dumped in the ocean.

### ELEMENTS OF OFFENSE:

- **Person or company**
- **Knowingly**
- **Transports** (proof of actual dumping is NOT required)
  - - from the United States on any vessel, OR
  - - from any location on a U.S. vessel
- **Material** (includes almost everything except sewage generated by that particular vessel, and oil that was not brought on board for purposes of dumping)
- *for the Purpose of Dumping* it (no proof of actual dumping is required, only proof that a person transported material with the intention that it be dumped in the ocean)
- *into the Ocean*
- *without a Permit* (issued by EPA under 40 C.F.R. Parts 220-224)

### MAXIMUM CRIMINAL CONSEQUENCE:

- **Felony** - up to 5 years in jail and/or criminal fine up to \$250,000 for an individual or \$500,000 for an organization.

The fine is based on the Alternative Fines Act in 18 U.S.C. § 3571, which also provides that a person or organization may be fined up to twice the pecuniary loss or pecuniary gain caused by a violation.

### ADDITIONAL CONSIDERATIONS FOR THIS OFFENSE:

- 33 U.S.C § 1411(b) also prohibits the **actual dumping** of material transported from any location outside the U.S. into the waters **within 12 NM** of the U.S.

## REFUSE ACT

### BACKGROUND:

The Rivers and Harbors Refuse Act of 1899, 33 U.S.C §§ 407, 411, prohibits the discharge, deposit, throwing, dumping, or pumping of any refuse matter of any kind from vessels or shore establishments into the navigable waters of the U.S. Violations of the Refuse Act are criminal; there is no provision for civil penalties.

### ELEMENTS OF OFFENSE:

- **Person or company**
- **Discharges or deposits** (or causes, **suffers**, or procures such)
- *from a Vessel* (floating craft of any kind) or from the **Shore**, or from a manufacturing establishment
- *any Refuse Matter* of any kind or description whatever
- *into or along the bank of any navigable water or tributary*
- *without a permit*

### MAXIMUM CRIMINAL CONSEQUENCE:

- Misdemeanor - not less than 30 days nor more than one year in jail and/or a fine of up to \$100,000 for individuals or \$200,000 for organizations.

The fine is based on the Alternative Fines Act in 18 U.S.C. §3571, which also provides that a person or organization may be fined up to twice the pecuniary loss caused by a violation.

### ADDITIONAL CONSIDERATIONS:

- As indicated in the discussion of CRIMINAL INTENT in paragraph 1.A.(2), the Refuse Act is a public welfare law supporting the overriding social interest in preserving the environment. Its maximum penalty is only a misdemeanor. It has been held to be a strict liability offense where no evidence of intent is required, so that a company could be convicted and sentenced to a criminal fine even where it took all reasonable precautions to avoid the discharge. Thus it could be used without even the simple negligence required for a FWPCA violation.
- 33 U.S.C. § 411 gives the Court discretion to award up to of the fine to the person giving information leading to conviction.

**FALSE STATEMENTS OR DOCUMENTS AND EVIDENCE OF ATTEMPTS TO  
OBSTRUCT JUSTICE**

**A. BACKGROUND:**

As penalties for environmental offenses become more severe, there is an increasing incentive for targets of investigation to respond to inquiries in an untruthful manner or to take other actions to keep the Coast Guard from finding out about environmental violations. Investigators should be alert for the following felony offenses involving false information or the obstruction of justice and may find it useful to remind witnesses and company officials of the consequences of such conduct in official dealings with the Coast Guard.

**B. ELEMENTS OF PROOF AND OTHER CONSIDERATIONS FOR SPECIFIC OFFENSES:**

1. FALSE REPRESENTATION INVOLVING AN OFFICIAL MATTER  
(18 U.S.C § 1001)
2. OBSTRUCTION OF JUSTICE - WITNESS TAMPERING  
(18 U.S.C § 1512)

**FALSE REPRESENTATION INVOLVING AN OFFICIAL MATTER (18 U.S.C.  
§ 1001)**

**ELEMENTS OF OFFENSE:**

- **Person or Company** (including employees acting on their behalf)
- in any **Matter within the jurisdiction of any U.S. agency** (a matter is within the jurisdiction of the Coast Guard if the agency can exercise authority under the circumstances)
- **Makes a false representation**
- OR
- **Makes a false statement**
- OR
- **Makes or uses document** known to contain any false entry
- **Knowing that the representation is false, or intentionally makes, utters, or uses it with an intent to deceive**
- The representation is "**Material**" (a representation is material if it has the capability of affecting or influencing the exercise of a governmental function; it need not have been made directly to agency personnel and the agency need not have been actually affected by the false statement)

**MAXIMUM CRIMINAL CONSEQUENCE:**

- **Felony** - not more than 5 years in jail and/or a fine of up to \$250,000 for individuals or \$500,000 for organizations.

The fine is based on the Alternative Fines Act in 18 U.S.C. §3571, which also provides that a person or organization may be fined up to twice the pecuniary loss caused by a violation.

**ADDITIONAL CONSIDERATIONS**

- For oil or hazardous substances pollution cases, see also Part 4 of this guidance for the offense of false statement in a report or document or tampering with a monitoring device required under the FWPCA. 33 U.S.C § 1319(c)(4).
- See also the general obstruction of justice offenses in 18 U.S.C §§ 1501-1517, portions of which are discussed in the following pages of this guidance.

**OBSTRUCTION OF JUSTICE - TAMPERING WITH A WITNESS, VICTIM, OR  
INFORMANT (18 U.S.C. §1512)**

**ELEMENTS OF OFFENSE**

- **Person or Company** (including employees acting on their behalf)
- **Knowingly uses intimidation or physical force**, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to:
  - 1. **influence**, delay, or prevent the **testimony** of any person in an official proceeding;
  - 2. **cause or induce** any person to:
    - a. **withhold testimony**, or withhold a record, document, or other object from an official proceeding;
    - b. **alter, or destroy, or conceal** an object with the intent to impair the object's integrity or availability for use in an official proceeding;
    - c. **evade legal process**, or
    - d. **be absent from an official proceeding** to which such person has been summoned by legal process; or
  - 3. **hinder, delay, or prevent the communication to a U.S. law enforcement officer** of information relating to the possible commission of a Federal offense

**MAXIMUM CRIMINAL CONSEQUENCE:**

- **Felony** - not more than 10 years in jail and/or a fine of up to \$250,000 for individuals or \$500,000 for organizations.

The fine is based on the Alternative Fines Act in 18 U.S.C. § 3571, which also provides that a person or organization may be fined up to twice the pecuniary loss caused by a violation.

**ADDITIONAL CONSIDERATIONS**

See also related offenses of:

- 18 U.S.C. § 11 - Forcibly assaulting, resisting, or impeding a Federal Officer engaged in or on account of the performance of official duties.
- 18 U.S.C. § 1503 - Influencing the due administration of justice.
- 18 U.S.C. § 1505 - Obstruction of agency proceedings.



- 18 U.S.C. § 1510 - Bribery to obstruct a criminal investigation.
- 18 U.S.C. § 1511 - Obstruction of State or local law enforcement.
- 18 U.S.C. § 1513 - Retaliating against a witness, victim, or informant.
- 19 U.S.C. § 70 - Master of a vessel obstructing an officer of the customs boarding to enforce U.S. revenue or navigation laws. (civil penalty)
- 19 U.S.C. § 1581(d) - Failure to stop on command of an officer of the customs. (civil penalty)
- 46 U.S.C. § 324 - Obstructing an officer enforcing licensing or documentation laws. (civil penalty)



APPENDIX II

MARINE POLLUTION/SIGHTING ENFORCEMENT  
REPORT FORMAT

## MARINE POLLUTION SIGHTING/ENFORCEMENT REPORT FORMAT

### 1. Discharge

- A. Type of pollution (garbage, oil, plastic, etc.)
- B. Date and time (DTG/GMT) observed.
- C. Position (LAT/LON and distance from nearest land).
- D. Description and amount of pollutant.

#### FOR OIL

dimensions of sheen (length x width).  
appearance (continuous, patchy, windrows).  
percentage of area covered by discharge.  
estimate apparent **CATEGORY** of slick (A-F).

- A: Barely visible under best lighting.
- B: Visible as silvery sheen.
- C: First trace of color observable.
- D: Bright bands of color.
- E: Colors dull.
- F: Colors are much darker.

#### FOR NON-LIQUID

describe the type of material.  
estimate number of bags, pieces, etc.

#### FOR HAZARDOUS SUBSTANCES

describe the material.  
describe any physical appearance in the water or on land.  
indicate the reportable quantity.  
give quantity of substance discharged and how determined.

- E. On scene conditions.

Wind Direction and speed.  
Sea state/current (direction and speed).  
Visibility (miles) at the time of observation.  
Sky (bright sun, overcast, etc.).

### 2. Vessel(s) Suspected of Violation

- A. Name.
- B. Vessel length and type (e.g., tanker, freighter, fishing).
- C. Vessel's flag, official number, and home port.

- D. Course, speed and position (if different from 1C).
- E. Last port/next port.
- F. Proximity of vessel to pollutant and any other reasons to suspect vessel of responsibility for pollution.
- G. Area of vessel from which discharge emanated (Port quarter, etc.), and whether discharge ceased upon contact with vessel.
- H. Other vessels in the immediate vicinity of (include identification and position if known).
- I. Summary of any communications with the vessel.

### **3. Additional Information**

- A. Master's explanation of pollution.
- B. Any report of distress or emergency.
- C. Evidence of equipment failure or personnel error (who ordered discharge).
- D. Time discharge started/terminated.
- E. Name and contact phone number of vessel's master and owner/agent.
- F. Names of other individuals involved.
- G. Other comments of observer(s).

### **4. Identification of Observer(s) and Location of Evidence**

- A. Name, rank and unit (of pilot/observers/sensor operators).
- B. Platform from which observation made (aircraft number, etc.) and specific location of platform (if significantly different than 1C or 2D).
- C. Methods of Observation and Documentation (describe).

Visual, Video/photos, remote sensing records (SLAR print out or video).

Sample(s) (from water, suspect vessels, etc.).

- D. Unit (or location) where witnesses are located and evidence is held with contact phone number for additional information in next 24 hours.

# SAMPLE MARPOL SIGHTING/ ENFORCEMENT REPORT

United States Coast Guard  
XXXXX Coast Guard District  
Network Operations Center

COMMAND : XXXXXXXXXXXX  
INFO : OPC, OLE, MEP, OSR, OII-4, M, DPA, DL, O, DCS, AT.  
DPL  
SSIC : N16450

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--  
P XXXXXXXXXXXXXXXX ZUI ASN-DO7224000180  
FM COGARD AIRSTA XXXX//OPS//  
TO COGARD NATIONAL RESPONSE CENTER WASHINGTON DC  
INFO COMDT COGARD WASHINGTON DC//G-MEP//  
COMXXXAREA COGARD //AD//  
ZEN/CCGDXXXX //OPC/OLE/MEP/OSR//  
COGARD MSO XXXXXX//PORT OPS//  
BT

UNCLAS //N16450

SUBJ: MARPOL ENFORCEMENT REPORT

## 1.DISCHARGE

- A. TYPE: (OIL, HAZARDOUS SUBSTANCE, GARBAGE, ETC.)
- B. DTG (OF DISCHARGE):
- C. POSN OF DISCHARGE:
- D. DESCRIPTION, AMOUNT AND CATEGORY:
- E. WX CONDITIONS:

## 2.VESSEL(S) SUSPECTED OF VIOLATION

- A. NAME:
- B. LENGTH AND TYPE:
- C. FLAG, O.N., AND HOME PORT:
- D. COURSE AND SPEED AND POSITION:
- E. LAST PORT / NEXT PORT:
- F. AREA OF SHIP WHERE DISCHARGED AND WHETHER DISCHARGE CEASED  
UPON CONTACT:

## G. VESSELS IN VICINITY:

## H. SUMMARY OR COMMUNICATION WITH VESSEL:

## 3.ADDITIONAL INFORMATION

- A. MASTER'S EXPLANATION:
- B. DISTRESS OR EMERGENCY:
- C. EQUIPMENT FAILURE:
- D. TIME DISCHARGE START/END:
- E. NAME AND CONTACT PHONE NUMBER OF VESSEL'S MASTER,  
OWNER/AGENT:

## F. NAMES OF OTHER INDIVIDUALS:

## G. OTHER COMMENTS OF OBSERVER(S):

## 4.IDENTIFICATION OF OBSERVER(S) AND EVIDENCE

- A. NAME, RANK AND UNIT:
- B. PLATFORM AND LOCATION OF OBSERVATION (IF DIFFERENT THAN 1C  
OR 2D.):
- C. METHOD OF OBSERVATION AND DOCUMENTATION:
- D. UNIT AND CONTACT NUMBER FOR FURTHER INFO WITHIN 24 HRS:



U.S. Department  
of Transportation

**United States  
Coast Guard**

2100 Second St., S.W.  
Washington, D.C. 20593

Official Business  
Penalty for Private Use \$300